

A Comparison of Witness Protection Programs:  
Bosnia and Herzegovina & The United States of America—  
To Develop a Victim Witness Coordination System for Victims of Trafficking  
In Bosnia and Herzegovina

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## **Executive Summary**

Concerning trafficking Bosnia and Herzegovina is a country of destination, transit, and increasingly of origin—due to the post conflict situation, the levels of poverty, access and variety of marketable educational/training opportunities, public services, employment, domestic violence, and discrimination against women. However, a considerable number of activities have been undertaken and implemented to strengthen the institutional framework in order to more effectively combat the trafficking phenomenon. Bosnia and Herzegovina adopted regulations, laws, plans, and procedures focused on providing assistance and protection for victims of trafficking in human beings and if applicable for their families/close associates and criminal laws and procedures to prosecute traffickers. These adopted laws and procedures are: the State Action Plan on Prevention of Human Trafficking in Bosnia and Herzegovina (December, 2001 revised on a regular basis); the establishment of the State Group (March 2002); appointment of a State Coordinator for Combating Human Trafficking and Illegal Immigration (July 2003); the Law on Movement and Stay of Foreigners and on Asylum (October 2003); changes to the constitution within the context of the Dayton Peace Agreement (December 1995) noting the obligation of the State to secure for all persons the enjoyment of rights and freedoms without discrimination; and ratification of numerous United Nations legislative instruments protecting the human rights of trafficked victims.

Yet, numerous problems persist in connection with the prosecution of traffickers. In response, the Bosnia and Herzegovina Parliament adopted two laws (March 2003) to be implemented by the State level institutions to provide increased protection and assistance to victims of trafficking when participating in official criminal proceedings—the Bosnia and Herzegovina Laws on Witness Protection Program the Protection of Witnesses under Threat and Vulnerable Witnesses implemented by the Ministry of Security jointly through the State Investigation and Protection Agency, the Bosnia and Herzegovina State Court (Witness Support Office) and State Prosecutor's Office. Furthermore, the international community and other donors remain the primary source of financial support although Bosnia and Herzegovina continues to increase the amount of allocated financial resources every year. The financial support available unfortunately falls short of what is necessary and the international community continues to monitor the process and promote the process of implementation, and in terms of developing the majority of the activities. Domestic stakeholders have yet to take full ownership of the process and government structures due to continued political problems remain weak, fractionalized, and fraught with allegations of complicity in trafficking activities and corruption, which provides mixed, poor results in terms of successful prosecution and effective, comprehensive provision of assistance and protection towards trafficked victims.

This assessment highlights the primary differences between the U.S. and Bosnia and Herzegovina systems which are the number of actors involved at the executive/judicial government levels, allocation of financial, technical, and logistical resources, and the development of an extensive network of service providers who are obliged to provide assistance as a mandatory right without placing emphasis on the immigration and/or

residency status connected with the victim, and active, comprehensive implementation leading to successful delivery of assistance and protection measures. Additionally, Bosnia and Herzegovina needs to enact a monitoring and evaluation system that conducts research by an independent body in order to improve the existing system and create new activities to more effectively fight against trafficking and as well to aggressively prosecute those responsible for trafficking and connected to the traffickers.

Bosnia and Herzegovina state law enforcement agencies place counter trafficking and trafficking related offences under their organized and serious crimes strategies, however assistance and protection continues to be regulated more towards alien victims. This should change in the future once implementation of the Rules on Protection of The Victims and Victim-Witnesses of Trafficking in Human Beings, Citizens of Bosnia and Herzegovina (September 2007) commences. Bosnia and Herzegovina is obliged to promote a human rights/victim centered compliant approach towards protecting and offering assistance to trafficked victims and currently implementation falls far short of the minimum core obligations that Bosnia and Herzegovina as a state must undertake to progressively realize and implement these rights. Furthermore, regulation of residency and immigration status remains a contingent factor connected to assistance rights and application of witness protection measures. The procedures for the delivery of assistance and protection are not institutionalized and are distributed on an ad hoc basis that varies from case to case. It is necessary to create written procedures to identify victims and victim witnesses under threat & vulnerable victims and this requires assessment tools utilizing non discriminatory criteria that should be distributed to all agencies involved which should include mechanisms to offer assistance and protection to both alien and domestic victims irrespective of where they are identified within the country and of their immigration status. Furthermore, deliverance of technical, financial, and logistical resources must be made available throughout the country especially as the entity (cantons, districts, and municipalities) do not comprehend what is expected of them in terms of their assistance and protection roles, nor do they perceive themselves as having the ability or responsibility to implement the procedures & laws protecting the rights of both alien and domestic victims.

In terms of assistance and services there are procedures that offer: placement within shelters; relocation and resettlement—although very little information is available regarding internal and external programs; identity protection (inside and outside of the courtroom); social and psychological services (either through shelter providers or through the State Court Witness Support Office); translation; legal aid/representation (through the State Court Witness Support Office or through a nongovernmental legal aid provider); civil and criminal restitution procedures (rarely pursued); regulation of residency and immigration status; data protection systems with prosecution procedures in place for disclosure of protected information (rarely enforced); and ad hoc assessments of potential risks and threats (no written procedures developed with criteria).

Meetings were held with different witness protection stakeholders and this assessment highlights a compilation of practices concerning how the current witness protection and assistance system functions among the Bosnia and Herzegovina state level stakeholders. Only one stakeholder could discuss witness protection for trafficked victims (for the purpose

of sexual exploitation) and this was the Bosnia and Herzegovina State Protection Investigation Agency Head of the Witness Protection Department. The Witness Protection Department Head mentioned that the Department provided protection to trafficked victims in the same manner that other protection cases receive and the other interviewed stakeholders were not familiar with protection of trafficking cases and/or mentioned that the shelter assistance providers conducted this scope of work. This is why the information contained within this assessment does not highlight assistance and protection concerns for trafficked victims for the purpose of sexual exploitation and is an indicator, based upon the priorities associated with the prosecution of war crimes, why witness protection associated with trafficked victims for the purpose of sexual exploitation has failed in the past.

Thus the findings reflect that in most cases despite the progress that has been made, Bosnia and Herzegovina continues to pursue the very minimum (and often less so) allowable standards of assistance and protection; protection and assistance procedures are not developed for alien and domestic victims at the Entity, Canton, District, or municipal levels; the development of a rulebook connected to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses regulating protection and care is not adopted; there are no guidelines for government agencies in relation to assistance, protection of witnesses, or pursuant to a victim referral mechanism; substantial financial allocations at the State level should be introduced; a more comprehensive human rights/victim centered approach should be implemented; increased efficiency and identification of victims; elimination of disclosure of information and identities of victims under protection and prosecution enforced when this occurs; efficient and vigorous prosecution of traffickers and those involved in trafficking including more stringent application of sentencing measures; introduction of restitution cases within the civil and criminal prosecutions ex officio for victims and for the State in terms of securing funds, seizure of assets and/or property; secure and increase ease of access to rights associated with health, psychological, and social assistance for victims through harmonization of the respective laws [(social, health, employment & training, education, and concerning the criminal and criminal procedure codes); reintegration/socialization programs within the country; access to employment, training, or educational programs; and basic living allowances)] and substantially improved communication and coordination between the State, entities, cantons/districts, and municipalities; as well as the codification of a transnational referral mechanism including regional placement of victim/witness coordinators acting as advocates for victims. Bosnia and Herzegovina should also address the cross-cutting issues associated with trafficking such as: gender mainstreaming, an increased child sensitive approach, as well as domestic violence and sexual violence against women.

Included within this assessment are recommendations to improve the Bosnia and Herzegovina Witness Protection System and on how to create a Bosnia and Herzegovina Victim Witness Coordination System as a component of the Bosnia and Herzegovina Witness Protection System and national referral mechanism. Those involved in the capacity building of the country's witness protection program need to consider and implement additional specialized features associated with protection for trafficked victims to ensure increased prosecution of those cases in the future. The failure to bring to justice and punish those responsible for serious violations of human rights and humanitarian law, especially those participating in organized crimes of a serious nature such as trafficking in human

beings for the purposes of sexual exploitation is considered impunity. Bosnia and Herzegovina as a State may be held as a liable, complicit party if it systemically fails to assume due diligence by implementing positive steps to protect, prosecute, and punish actors who commit abuses.

While Bosnia and Herzegovina does not actively participate in the trafficking of persons for the purpose of sexual exploitation, it can be argued that due to allegations of endemic corruption that political and public persons connected to organized crime networks who may be engaged in trafficking of human beings for the purpose of sexual exploitation that the state is a complicit party. Frequently Bosnia and Herzegovina authorities routinely disregard evidence of such activities or fail to investigate those under its service that may be involved, and thereby failing to take the minimum steps necessary to protect those living within its territory as well as failing to adequately protect their physical integrity and in dire situations their life. Bosnia and Herzegovina needs to consistently send a strong message that such activities will not be tolerated and will be punished. Support for the investigation and conviction of suspected public persons should be pursued and highlighted when successful.

Bosnia and Herzegovina can positively promote and increase its efforts of due diligence through law enforcement, justice departments, health and welfare personnel, and government programs that prevent and protect victims of violence through the creation of a functional, comprehensive victim witness coordination system operating within a legal framework and transnational referral mechanism. Adoption of such a system will be a component of numerous, concrete indicators that Bosnia and Herzegovina is actively pursuing due diligence through the progressive realization of activities aimed at ensuring that the existing laws and procedures in place are applied and if necessary adopting additional legislation to properly protect the rights of its citizen's as well as aliens within its territory. When Bosnia and Herzegovina increasingly punishes perpetrators through the judicial system this will send a clear message that serious violations of human rights will not be condoned and those who commit such crimes will be held accountable contributing to the development of the rule of law as well as promoting policies determined to sanction impunity.

Sufficient victim witness protection affirms the quality of the rule of law environment within a country. Bosnia and Herzegovina adopted Rules on Protection of the Victims and Victim Witnesses of Trafficking in Human Beings, for citizens of Bosnia and Herzegovina thereby further supporting and building upon the counter trafficking structures and creating the legal basis for victim witness protection for domestic victims and the formation of a Victim Witness Coordination System. Judicial, prosecutorial, and civil servant agencies practices will further elaborate how these provisions will function in practical terms and it is important that an effective monitoring and evaluation system is created, properly managed, report, and take swift action when procedures work against the interests of victims and victim witnesses. This supported by a codified national referral mechanism will enable victims and victim witnesses to access different levels and types of procedural and non procedural rights from the moment of identification to post proceedings and if developed properly— beyond. These protections should be created in order to meet the personal specific needs of victims and victim witnesses and be flexible enough to adapt to the ever changing nature of risks and developing criminal elements.

Legal reforms and assistance/protection systems ideally must be complimented by significant, ongoing institutional coordination and the development of best procedural practices to ensure that victims are properly identified, provided with assistance and protection, and have access to justice respecting their human rights in order to take independent informed decisions as well as remedies available in the event that the systems, procedures, or responsible authorities fail. The establishment of a codified National Referral Mechanism complimented by a Victim Witness Coordination System will greatly assist this coordination. The Bosnia and Herzegovina State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in cooperation with all other authorized institutions should ensure that sufficient financial resources are available for the proper functioning of the Victim Witness Coordination System and as well undertake advocacy efforts among the offices of donors at the international, regional, and state agencies involved in this process in an effort to promote solid practices, codes of conduct that are victim friendly while at the same time respecting the rule of law. The international community, regional partners, and identified in country experts should provide technical, logistical, and financial assistance/advice and capacity building measures in order to create this system, as well as facilitate efforts to engage service providers, civil society, the religious communities, local community leaders, gender agencies and commissions within this process. All of these efforts will go far in achieving the success and functionality of the system and in turn promote a stronger, more equitable and healthy future for all Bosnia and Herzegovina citizens and the country.

Why does Bosnia and Herzegovina need a Victim Witness Coordination system? Placement of trafficked victims in shelters and/or the offering of shelter services—despite their high quality and the provision of legal aid (court appointed and/or pro bono) have not proven to be effective strategies for maintaining the cooperation of trafficked victims, ensuring comprehensive delivery of services or protection, increased prosecutions, or the sustained engagement of victims and victim witnesses participation within the criminal justice system. Victim Witness Coordinators, who remain in contact with victims, increases the victim witnesses understanding of and engagement within the criminal justice system which leads to more successful prosecutions, as well as ensures advocacy for assistance.

According to the enclosed U.S. and Romanian experiences—continued, consistent coordination resulted in increased services and more successful identification of trafficked victims. In the U.S. success appears to be highly dependent upon consistent communication/coordination among service providers—civil society—faith based organizations. This is why, along with the above mentioned recommendations, roles, and responsibilities among all stakeholders must be clear and delineated so assistance and protection is provided throughout the process. Further development of an extensive network of assistance agencies (include agencies dealing with victims of torture) is also crucial. According to the U.S. and Romanian experiences best practices developed over time and have been incorporated within the system and implemented when new cases come forward. In fact, it appears that any system will always require a certain amount of adaptation since violent crimes are constantly changing and adapting to the methods used by the criminal themselves. The U.S. has learned the following, which is applicable also to Bosnia and



Herzegovina—many victims do not see themselves as victims of trafficking and considerable time and educational efforts are required before they change their perception. The cases usually involve minor, domestic victims and the system should be adapted to the situation in the “field” and not exclusively handled by the criminal justice system.

The U.S. example of “Family Justice Centers” providing all services in house and the concept of the Witness Liaison Service has also proven to be very successful and has reduced the dropout rate of participating victims for three important reasons: cases are followed from the first moment of contact by the program services providers by Case Managers directly delivering services to trafficked victims until completion of court cases and if necessary for as long as the victims require their support; victims are encouraged to participate and remain in the program since they see that the system cares about them and their needs; and there is no time limitation restricting trafficked victims in terms of requesting support or services—victims can return to the center “forever” and this is not contingent upon whether they initially collaborated with the law enforcement system. To facilitate communication and coordination “team building” exercises among law enforcement, shelters, and service providers should be organized to improve relationships, cooperation, communication, and trust. Professionals working with trafficked victims must incorporate flexibility into any system, be willing to adjust programs, and “think on their feet” acting swiftly within time constricted and culturally sensitive deadlines to meet the needs of trafficked victims.

All of the interviewed professionals agreed that establishing a Victim Witness Coordination System is a difficult undertaking and working with trafficked victims is challenging and complex. Prior to creating a Victim Witness Coordination System, Bosnia and Herzegovina authorities should request that Victim Witness Experts from the U.S. and as a regional experience their relevant Romanian Colleagues visit Bosnia and Herzegovina and vice-versa to observe and exchange experiences and field practices. Bosnia and Herzegovina should consider carefully where and how in the first phase to implement a Victim Witness Coordination System and the corresponding Victim Witness Coordinators’. Initially it is recommended within two of the four State Protection and Investigation Agency Regional Offices including the co-location of service provider focal points (social welfare-psychologist-health care worker), in the State Protection and Investigation Agency Witness Protection Department office, and in the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration Office. As the program expands and increases its visibility, success, and credibility Victim Witness Coordinator's can be implemented in other locations located in the Canton/District Social Welfare Center's, in the Canton/District Prosecutors Offices, and within other professional service provider offices. Ultimately the creation and development of a Bosnia and Herzegovina Victim Witness Coordination System for trafficked victims should be discussed and decided further with the Bosnia and Herzegovina State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration and the State Protection and Investigation Agency Witness Protection Head of Department.

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### **The Bosnia and Herzegovina (BiH) —**

Ministry of Security

State Coordinator for Combating Human Trafficking and Illegal Immigration

State Protection and Investigation Agency (SIPA) Witness Protection Director

### **The Bosnia and Herzegovina State Court—**

Witness Support Office

Prosecutor's Office Department for Organized Crime, Economic Crimes, and Corruption

Special Department for War Crimes, Prosecutor's Registry, and Registry for War and Organized Crimes

Judges, Prosecutor's, Legal Counsel, and Advisor's

### **The European Union Police Mission (EUPM) to Bosnia and Herzegovina**

### **The BiH International Criminal Investigative Training Assistance Program (ICITAP)**

### **The Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina**

### **The Bosnia and Herzegovina Global Rights, Partners for Justice Office**

### **The BiH World Learning Star Network Office**

### **The BiH & Romania Offices of the Prosecutorial Development Assistance and Training (OPDAT)**

### **The Romanian National Agency against Trafficking in Persons (ANAT)**

### **The International Centre for Migration Policy Development (ICMPD) Romania TRM Project**

### **The United States Marshal's Service**

### **The United States Office to Monitor and Combat Trafficking in Persons**

### **The Health and Human Services Office of Refugee Resettlement Rescue & Restore Program**

### **The United States Department of Justice Victim Witness Coordination Unit**

### **The Brooklyn District Attorney's Office & Family Justice Centre**

The enclosed research is based upon primary and secondary sources of information gathered from: a) reports and information posted on government agency websites for both Bosnia and Herzegovina and the United States; b) internet queries; c) a review of the collected information on the mechanisms available concerning the availability of witness protection (legislation, policies, infrastructure, the role of the various government agencies and law enforcement); d) interviews with relevant stakeholders and witness protection actors located in both Bosnia and Herzegovina and the United States; e) overviews of collected best practices; f) as well as recommendations for improvements of the existing Bosnia and Herzegovina system and the creation of a Victim Witness Coordination System. This research commenced in May 2007 and concluded in July 2007.

### **Research Methodology**

The International Organization for Migration (hereinafter IOM) Mission in Bosnia and Herzegovina (hereinafter BiH) is in the second year of implementing a comprehensive counter trafficking project proposal funded by the United States Agency for International Development (hereinafter USAID) connected with improving the capacity of the Bosnian Government to respond to victims of trafficking whether they are foreign aliens or national BiH citizens. The primary components of the project focus on protection (shelter networks, training for non governmental organizations, support, and assistance); prevention (seminars, engaging civil society and organizations working in the field of counter trafficking, raising awareness etc.); and participation/capacity building (roundtables, working groups, trainings, advocacy etc.). Section E4 of the project proposal (Legal Advocacy—Victim Witness Coordination System) requests that the BiH IOM Mission conduct an assessment of the existing BiH Victim Witness Coordination System using the United States (hereinafter U.S.) Federal model as an experiential example, since BiH does not have a well established, structured, functional Victim Witness Coordination System. The final recommendations will be based upon the primary and secondary research sources suggesting alternatives or improvements to the current BiH model leading to proposals for sustainable, durable solutions strengthening and creating a comprehensive, human rights based, secure Victim Witness Coordination System for trafficked victims.

Strong, sustainable, secure victim witness protection programs provide an invaluable framework, whose aim is to encourage victims to participate in the judicial process leading to increased prosecution as well as punishing traffickers for their actions. The aim of this research objective was to conduct a comparison of the United States Federal Witness Protection System in relation to the current Bosnia and Herzegovina Witness Protection System reviewing legal and operational aspects in order to highlight the gaps within the Bosnian System and determine what aspects need to be added or improved in order to create a functional, comprehensive, and sustainable Victim Witness Coordination System. The research focused on:

- 1) Identification, review, and analysis of witness protection systems in the U.S. and Bosnia and Herzegovina at the State levels;
- 2) Collection of best practices in relation to assistance and applied protection;

- 3) Evaluation of legislative, administrative, and operational frameworks to propose improvements within the Bosnia and Herzegovina system leading towards a (human) rights based—individual case management approach and successful protection mechanism increasing prosecution results and diminishing alleged corruption;
- 4) Suggestion of a harmonized approach towards trafficked victims irrespective of their origin (countries origin, destination, transit and international & domestic victims);
- 5) Development of a Victim Witness Coordination System for trafficked victims.

Bosnia and Herzegovina has legislative and government structures in place to address both foreign and national trafficked victims, although the provision of services towards the victims is delivered on an ad hoc basis from case to case. The current structure does not provide adequate delivery of services nor comprehensive protection, which is the reason for conducting this assessment and providing recommendations to develop a Victim Witness Coordination System. A successful system should address any victim of trafficking irrespective of his/her country of origin within a national referral mechanism ensuring non discriminatory, consistent delivery of assistance and protection, respecting the rights of the victims irrespective of their participation within the prosecutorial process.

## Acronyms

ANAT	Romania National Anti-Trafficking Agency
BiH	Bosnia and Herzegovina
BOP	Bureau of Prisons
CoM	Council of Ministers
CSN	Court Support Network
DOJ	Department of Justice
DOS	Department of State
EUPM	European Union Police Mission
FBI	Federal Bureau of Investigation
H.R.	House of Representatives Bill
ICE	Immigration and Customs Enforcement Department
ICITAP	International Criminal Investigative Training Assistance Program
IOM	International Organization for Migration
MoS	Ministry of Security
MoU	Memorandum of Understanding
NGO's	Nongovernmental organizations
NRM	National Referral Mechanism
OEO	Office of Enforcement Operations
OHR	Office of the High Representative
OPDAT	Office of the Prosecutorial Development Assistance and Training
SoPs	Standard Operating Procedures
SIPA	State Investigation and Protection Agency
TIP	Trafficking in persons
TVPA	Trafficking Victims Protection Act
U.S.	United States
USAID	United States Agency for International Development
USMS	United States Marshals Service
VWC	Victim Witness Coordinator
VWPA	Victim and Witness Protection Act of 1982
WASU	Manhattan District Attorney's Witness Assistance Office
WSA	New York County District Attorney's Office Witness Aid Service
WPD	Witness Protection Department
WPP	Witness Protection Program
WSO	Witness Support Office
WSSOU	Witness Security and Special Operations Unit

## **I. U.S. Federal Government Witness Protection System**

### **Introduction**

Trafficking in persons (hereinafter TIP) is a modern day form of slavery. Victims of human trafficking are exposed to force, fraud, and coercion for the purpose of exploitation: sexual, forced labor-services-slavery, or removal of organs. Victims are young children, teenagers, men, and women. After drug dealing, human trafficking is the second largest and fastest growing criminal industry in the world. The U.S. Department of Justice estimates that 600,000 to 800,000 human beings are trafficked against their will across international borders and of those 14,500 to 17,500 are trafficked into The United States—80 percent of these victims are women and girls and 70 percent are forced into sexual servitude.<sup>1</sup> Due to this ever increasing problem, the Trafficking Victims Protection Act of 2000 Public Law 106-386 (hereinafter TVPA)<sup>2</sup> was adopted as Public Law on 28 October 2000. This Act enhanced the legal mechanisms, expanded the crimes and the penalties available to federal investigators and prosecutors pursuing traffickers; offered a new range of protections and assistance for victims; and increased the activities that the U.S. pursues internationally in terms of preventing victims from being trafficked. Prior to this enactment no comprehensive federal law existed to not only protect victims of trafficking but also to prosecute those involved in the process of trafficking them. The TVPA, under its various activities, prevents human trafficking overseas, protects victims and helps them to rebuild their lives in the United States, as well as prosecutes traffickers under federal penalties. Subsequently 22 states have adopted anti trafficking laws and currently seven states are considering their adoption. The United States exhibits a strong, proactive approach towards fighting trafficking, which under the TVPA enhances three aspects of the federal government activities to combat trafficking in persons better known as the three P's: protection, prosecution, and prevention.

### **U.S. Federal Legislation**

#### **Trafficking Victims Protection Act of 2000**

The 2000 TVPA established the provisions for victim assistance and protection in the United States. Trafficked victims are eligible for federally funded or administered health and other benefits and services; mandated by the U.S. government agencies providing protection for victims of trafficking and where applicable, their families. The TVPA and amendments—the Trafficking Victims Protection Reauthorization Act of 2003 (H.R. 2620), and the Trafficking Victims Protection Reauthorization Act of 2005 (H.R. 972) provide the tools to combat trafficking in persons both worldwide and domestically in the U.S. These Acts authorized the establishment of a government trafficking in person's strategy and the President's

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<sup>1</sup> Attorney General's Annual Report to Congress on U.S. Government Activities to Combat Trafficking in Persons Fiscal Year 2005; these figures may be overestimated and an attempt to quantify a hidden problem. Further research is in progress to determine a more precise figure based upon advance methodologies and the complete understanding of the nature of trafficking.

<sup>2</sup> TVPA 2000 Public Law 106-386.

Interagency Task Force to Monitor and Combat Trafficking in Persons to assist in the coordination of anti-trafficking efforts.<sup>3</sup>

The TVPA of 2000 law is divided into three divisions, division A—TVPA of 2000; division B—Violence Against Women Act of 2000; and division C—miscellaneous provisions. “Division A” is composed of thirteen (13) sections whose activities under the act are outlined as: purposes and findings; the definitions used within the act to define trafficking; annual country reports on human rights practices; the establishment of an “Interagency Task Force To Monitor and Combat Trafficking”; prevention; protection, and assistance for victims; the minimum standards for the elimination of trafficking; assistance to foreign countries to meet the minimum standards; actions against governments failing to meet the minimum standards; actions against significant traffickers of persons; efforts to strengthen prosecution and punishment of traffickers; and authorizations of appropriations. The activities underlined within “Division A” are to combat trafficking in persons “as a contemporary manifestation of slavery whose victims are predominately women and children, to ensure just and effective punishment of traffickers, and to protect their victims”.

The Interagency Task Force To Monitor and Combat Trafficking (hereinafter Task Force) under section 105 states that the Task Force is established by the President of the United States to monitor and combat trafficking. The President appoints the members, who are authorized personnel from a variety of government agencies and chaired by the Secretary of State to 1) coordinate implementation of the division; 2) measure and evaluate progress of the U.S. and other countries in the areas of trafficking prevention, assistance to victims, and prosecution and enforcement against traffickers including also the role of public corruption in facilitating trafficking; 3) expand interagency procedures to collect and organize data including significant research and resource information on domestic and international trafficking respecting the confidentiality of the trafficked victims; and 4) engage in efforts to facilitate cooperation among countries of origin, transit, and destination in an effort to strengthen local and regional capacities to prevent trafficking, prosecute traffickers, and assist victims while including initiatives to enhance cooperative efforts between destination and origin countries while facilitating reintegration of stateless victims of trafficking. The Secretary of State is authorized to organize within the Department of State (hereinafter DOS) an “Office to Monitor and Combat Trafficking”, which provides assistance to the Task Force and is headed by a Director to assist the Secretary of State in conducting the responsibilities of the force. The appointed Director should consult with nongovernmental organizations (hereinafter NGO’s) and multilateral organizations, as well with trafficked victims or other affected persons. This Director also has the authority to take evidence in public hearings or through other means. Additionally, the Agencies participating as members of the Task Force may provide staff to the force on a non reimbursable basis.

The success of U.S. Government efforts to combat trafficking in persons domestically hinges on pursuing a victim-centered approach and all U.S. Government agencies are therefore committed to providing victims access to the services and benefits provided by the TVPA.

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<sup>3</sup> Department of State Webpage [www.state.gov/g/tip/laws](http://www.state.gov/g/tip/laws)

Witness protection<sup>4</sup> and assistance for victims of trafficking is listed under Section 107 of the TVPA and operationally implemented by U.S. Charter Law 22 U.S. C. 7105<sup>5</sup> outlining assistance and protection measures for victims in other countries and in the U.S. Eligibility is based upon the establishment that a person, who is an alien or a citizen of the U.S. and is a victim of *a severe form of trafficking in persons*<sup>6</sup> as listed in the TVPA under Section 103, shall be eligible for benefits and services under any Federal or State program funded or

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<sup>4</sup> <http://polis.osce.org> : “Witness” means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony. “Protection Program”: “Protection Program”: a standard or tailor made set of individual protection measures which are signed by the responsible authorities and the protected witness or collaborator of justice. These measures are described or set out formally within a written document/body of laws.

<sup>5</sup> 22 U.S.C. Section 7105 (01 March 05) [Foreign Relations and Intercourse Chapter 78 Trafficking Victims Protection] Section 7105 Protection and Assistance for Victims of Trafficking 22 U.S.C. Section 7105 (01 March 05) [Foreign Relations and Intercourse Chapter 78 Trafficking Victims Protection] Section 7105 Protection and Assistance for Victims of Trafficking: after consultation with the Attorney General, that the person referred to in subparagraph (C)(ii)(II) - (I) is willing to assist in every reasonable way in the investigation and prosecution of severe forms of trafficking in persons; and (II)(aa) has made a bona fide application for a visa under section 1101(a)(15)(T) of title 8, as added by subsection (e) of this section, that has not been denied; or (bb) is a person whose continued presence in the United States the Attorney General is ensuring in order to effectuate prosecution of traffickers in persons. (ii) Period of effectiveness A certification referred to in subparagraph (C), with respect to a person described in clause (i)(II)(bb), shall be effective only for so long as the Attorney General determines that the continued presence of such person is necessary to effectuate prosecution of traffickers in persons. (iii) Investigation and prosecution defined For the purpose of a certification under this subparagraph, the term "investigation and prosecution" includes - (I) identification of a person or persons who have committed severe forms of trafficking in persons (II) location and apprehension of such persons; and (III) testimony at proceedings against such persons. (iv) Assistance to investigations In making the certification described in this subparagraph with respect to the assistance to investigation or prosecution described in clause (i)(I), the Secretary of Health and Human Services shall consider statements from State and local law enforcement officials that the person referred to in subparagraph (C)(ii)(II) has been willing to assist in every reasonable way with respect to the investigation and prosecution of State and local crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking appear to have been involved. (c) Trafficking victim regulations Not later than 180 days after October 28, 2000, the Attorney General and the Secretary of State shall promulgate regulations for law enforcement personnel, immigration officials, and Department of State officials to implement the following: Protections while in custody Victims of severe forms of trafficking, while in the custody of the Federal Government and to the extent practicable, shall - not be detained in facilities inappropriate to their status as crime victims; receive necessary medical care and other assistance; and be provided protection if a victim's safety is at risk or if there is danger of additional harm by recapture of the victim by a trafficker, including - taking measures to protect trafficked persons and their family members from intimidation and threats of reprisals and reprisals from traffickers and their associates; and ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public. Access to information victims of severe forms of trafficking shall have access to information about their rights and translation services. Authority to permit continued presence in the United States Federal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible, and such officials in investigating and prosecuting traffickers shall protect the safety of trafficking victims, including taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates.

<sup>6</sup> The definition of a severe form of trafficking means a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b) the recruitment, harboring, transportation, provision, or obtaining a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.



administered by any official or authorized agency. “Within (C) (2) (1) Protections for victims of severe forms of trafficking, while in Federal Government custody will not be detained in facilities that are not appropriate for their status as crime victims, will receive medical care and other assistance, and be provided protection if the victim’s safety is at risk or if there is danger of additional harm or recapture of the victim by a trafficker—including taking measures to protect trafficked persons and their family members from intimidation<sup>7</sup> and threats of reprisals and reprisals from traffickers and their associates; and ensuring that the names and identifying information of trafficked persons and their family members are not disclosed to the public”.<sup>8</sup> Victims of severe forms of trafficking have the right to have access to information about their rights and translation services and in the case of aliens the authority granting them continued presence in the U.S. and protection from removal.

## **II. Operation & Responsible Officials**

The first federal victims' rights legislation was the Victim and Witness Protection<sup>9</sup> Act of 1982 (hereinafter VWPA). The U.S. Congress amended and expanded upon those provisions in subsequent legislation especially in relation to the Crime Victim Rights Act of 2004.<sup>10</sup> The VWPA instructs the Attorney General’s Office to develop and implement guidelines with the U.S. Department of Justice consistent with the purposes of the Act. In compliance with the Congressional directive, the Attorney General created the Attorney General Guidelines for Victim and Witness Assistance on July 9, 1983, which were revised and re-issued periodically thereafter.<sup>11</sup> These Guidelines set forth the procedures that officials should follow in responding to the needs of victims and witnesses and the foundation for the guidelines is the Federal Crime Victims’ Rights Act and Laws.<sup>12</sup> The Crime Victim Rights Act also established a monitoring mechanism for victims through the creation of an Ombudsman’s Office. The Ombudsman’s Office can receive complaints from victims

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<sup>7</sup> <http://polis.osce.org>: “intimidation”: direct or indirect threats carried out or likely to be carried out towards a witness or collaborator of justice, which may interfere with his/her willingness to provide testimony free from interference or as a result of his/her testimony.

<sup>8</sup> <http://polis.osce.org>: “anonymity” the identifying particulars of the witness are not divulged to the opposing party or public.

<sup>9</sup> <http://polis.osce.org>: “Protection Program”: a standard or tailor made set of individual protection measures which are signed by the responsible authorities and the protected witness or collaborator of justice. These measures are described or set out formally within a written document/body of laws.

<sup>10</sup> Primarily through the following: the Crime Victim Rights Act of 2004 codified in 18 U.S. C. Law in section 3771, the Victims of Crime Act of 1984, the Crime Control Act of 1990, the Victims Rights and Restitution Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, and the Victim Rights Clarification Act of 1997.

<sup>11</sup> This most recent version of the AG Guidelines were issued in May 2005.

<sup>12</sup> Federal Crime Victim’s Bill of Rights: Title 42 U.S.C. § 10606(b) states that federal crime victims are accorded the following rights: 1) the right to be treated with fairness and with respect for the victim's dignity and privacy; 2) the right to be reasonably protected from the accused offender; 3) the right to be notified of court proceedings; 4) the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial; 5) the right to confer with the attorney for the Government in the case, 6) the right to restitution; 7) the right to information about the conviction, sentencing, imprisonment, and release of the offender; 8) the right to a speedy trial and to be heard; 9) the right to privacy and fairness.

against any employee of the U.S. Department of Justice, who violated or failed to provide their rights as outlined within the Crime Victim Rights Act of 2004.<sup>13</sup>

The Attorney General's Office published guidelines for victim and witness assistance under the U.S. Department for Justice, Office of Justice Programs—Office for Victims of Crime in 2000 in an effort to provide protection and assistance to victims of crime.<sup>14</sup> The guidelines are an informational tool for government agencies and service providers, who are responding to crime victims needs regarding the delivery of service and established rights for crime victims. These guidelines were amended and a new edition was distributed in May 2005 incorporating measures from the Justice for All Act of 2004, which included new instructions to improve assistance to victims of certain crimes such as human trafficking and identity theft. The purpose of the new guidelines is to inform victim assistance specialists and other personnel within the U.S. Department of Justice regarding the new protections so that crime victims can receive the protection they are entitled to.

The Attorney General's Office Guidelines under Article IV designate the responsible officials during various stages. During the investigation stage the Federal Bureau of Investigation (hereinafter FBI) should take reasonable steps to ensure that victims are provided with their rights immediately after receiving information that potential trafficked victims have been located. In the event that the FBI is not involved in the initial

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<sup>13</sup> [www.usdoj.gov/usao/eousa/vr/index.html](http://www.usdoj.gov/usao/eousa/vr/index.html): "A Crime victim may file a complaint against any employee of the Department of Justice who violated or failed to provide the rights established under the [Crime Victims' Rights Act of 2004](#), 18 U.S.C. § 3771. The Department of Justice has established the Office of the Victims' Rights Ombudsman to receive and investigate complaints filed by crime victims against its employees, and has implemented [Procedures to Promote Compliance with Crime Victims' Rights Obligations](#), 28 C.F.R. § 45.10. A crime victim includes any person who has been directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia. An employee of the Department of Justice includes any attorney, investigator, law enforcement officer, or other personnel employed by any division or office of the Department of Justice whose regular course of duties includes direct interaction with crime victims (not including a contractor).

<sup>14</sup> The OVC funds the Victim Witness Coordinator positions, provides emergency funds for trafficked victims, technical assistance, provides funds for task force victim service providers and other grantees, and administers the distribution of state crime victim compensation. Responsibility for implementing the prosecution-related provisions of the Attorney General Guidelines within the Department resides with the 93 United States Attorneys and litigating components, with each United States Attorney and/or Assistant Attorney General as the responsible official for cases in his/her district in which charges have been instituted. The United States Attorney and/or Assistant Attorney General are required to designate the individual or individuals to carry out victim-witness services in his or her office. Specifically, each United States Attorney's office is responsible for providing the following assistance and/or information: Information, Notice and Referrals; Consultation with a government attorney; A separate waiting area; Notification to victims and witnesses employers and creditors; Victim Privacy; Logistical Information; Limited Testing of Defendants in Sexual Assault Cases; Right to make statement about pretrial release in an interstate domestic violence, stalking, or violation of protective order case; Closed Circuit Televising of Court Proceedings in Change of Venue Cases Allocation Statements to the Court; Sentencing Proceedings; Victim Impact Statements. Responsibility for technical assistance to United States Attorneys' offices in implementing the AG Guidelines lies with the Law Enforcement Coordinating Committees/Victim-Witness Staff of the Executive Office for United States Attorneys. Responsibility for monitoring compliance with the Guidelines and provisions of the Victim and Witness Protection Act of 1982, the Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, the Victim Rights Clarification Act of 1997, resides with the Director, Office for Victims of Crime (OVC), Office of Justice Programs (OJP).

investigation then the Attorney General's Office or the Civil Rights Division should undertake the responsibility to ensure potential victims rights. Coordination with other agencies and officials from other federal government departments during the investigation and prosecution phases should take place especially with the Departments of Homeland Security (in coordination with the Immigration and Customs Enforcement Agency) and Health and Human Services<sup>15</sup> when enforcing the rights accorded to victims of severe forms of trafficking. Additionally, local and other law enforcement agencies are usually involved in the provision of protection since the level of risk and threats directed towards victims escalates after the issuance of an indictment.<sup>16</sup>

Identification of victims of severe forms of trafficking should take place at the earliest stages of the investigation, since they are eligible for specific forms of assistance and protection—whether or not an indictment is filed that includes charges under the TVPA. U.S. citizens and alien victims are entitled to parallel protection measures and this essentially means that both are entitled to the same benefits, however victims must participate in an investigation and alien victims must acknowledge their status as a victim of severe forms of trafficking in order to regulate their immigration status. Victims of severe forms of trafficking should not be detained<sup>17</sup> and should not be placed in facilities inappropriate to their status as crime victims<sup>18</sup>. The victims are entitled to medical and psychological assistance, a mental health assessment and treatment program, and other forms of assistance.<sup>19</sup> If their safety is in danger or there is a risk of additional harm then victims and their families and close associates should receive protection guaranteeing that they are secure from intimidation, threats of reprisals, and reprisals from traffickers and their associates, which includes actions to protect the identities of the victims and others at risk, which are not be disclosed to the public.<sup>20</sup> The victims are also entitled to legal and translation services and screening is conducted for those selected individuals that will provide interpretation to ensure that they are not involved in the trafficking activities or familiar with either the victims or the traffickers. In the event that there is insufficient evidence to meet the TVPA victim criteria threatened witnesses and their families or close associates<sup>21</sup> may be eligible for a significant public benefit parole to enable them to remain in the U.S. temporarily especially for those who are willing to assist law enforcement or have complied with reasonable requests for assistance during the investigation and prosecution of trafficking activities.<sup>22</sup>

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<sup>15</sup> The Department of Health and Human Services (Social Welfare Body) issues certification and eligibility letters so victims can receive federally funded assistance (food, housing, medical, cash) and funds to service providers caring for victims. The Department for Homeland Security with the Immigration and Customs Enforcement assist Special Agents with “emergency funds” (housing, food, clothing, medical etc). Both agencies can issue statements regarding cooperation with law enforcement for witness protection.

<sup>16</sup> Information provided by , U.S. Department of Justice Victim Witness Coordinator.

<sup>17</sup> 28 C.F.R. §1100.31 (b)

<sup>18</sup> 28 C.F.R. §1100.31 (b) & 22.U.S.C. § 7105 (c)

<sup>19</sup> 28 C.F.R. §1100.31 (b) & 22.U.S.C. § 7105 (c)(1)(B)

<sup>20</sup> 28 C.F.R. §1100.31 (d)/ 28 C.F.R. §1100.333 & 22.U.S.C. § 7105 (c)(1)(C)(i)(ii)

<sup>21</sup> <http://polis.osce.org>: “people close to witnesses and collaborators of justice: includes the relatives and other persons in a close relationship to the witnesses and the collaborators of justice, ie partner, parents, children, grandchildren, grandparents.

<sup>22</sup> [www.usdoj.gov/olp/final.pdf](http://www.usdoj.gov/olp/final.pdf) Attorney General's Guidelines for Victim and Witness Assistance May 2005, Pages 67 to 72.

## **Witness Protection**

The Victim and Witness Protection Act of 1982<sup>23</sup> as well as all other Federal Crime Victim Rights Laws apply and are available to trafficked victims and the Witness Protection Program within the 1982 Act only covers organized crime or other serious crimes such as severe forms of trafficking in persons, since severe forms of trafficking are considered to be organized crimes and/or other serious crimes. This Act was adopted to encourage trafficking victims to come forward and report their traffickers. The Act guarantees the victims' identity be concealed, which is used as a more efficient prosecution mechanism to punish traffickers and constituted a significant shift in U.S. Federal Criminal Policy. As mentioned in the preceding section, the Act explicitly provides that "victims of severe forms of trafficking, while in the custody of the federal government shall not be detained in facilities inappropriate to their status as a crime victim."<sup>24</sup>

Since severe forms of trafficking are considered to be organized crime activities the application of Chapter 224 (relating to witness protection) listed under Section 112 of the TVPA as Strengthening Prosecution and Punishment of Traffickers<sup>25</sup> established that victims of severe forms of trafficking are eligible to receive *specialized* protection measures. The TVPA mentions several government agencies responsible for assistance and protection; however upon further investigation the primary designated agency for the provision of witness protection is the U.S. Attorney General's Office in coordination with the U.S.

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<sup>23</sup> The Department of Justice Victim Witness program was established as a result of the Victim and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Violent Crime Control Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, and the Victim Rights Clarification Act of 1997. This act guaranteed federal victims and witnesses certain rights and imposed significant duties and responsibilities on the United States Attorney's Office. The Victim and Witness Protection Act of 1982 contains several provisions to aid victims and witnesses of federal crimes. The Act is applicable to all victims and witnesses of serious crime, those involving personal violence, attempted or threatened personal violence or significant property loss. The three basic provisions of the Act are Notification, Consultation, and Referral services for victims and witnesses of serious crime. The United States Attorney's Office is committed to ensuring that crime victims and witnesses are treated fairly, with dignity and respect, throughout their involvement in the federal criminal justice system. The goal of the Victim-Witness Assistance Unit is to respond to the needs of victims and witnesses of federal crimes, in accordance with provisions of federal law and Department of Justice regulations. Federal laws granting crime victim's rights include: The Victim Witness Protection Act of 1982; The Crime Control Act of 1990; Victims' Rights and Restitution Act of 1990; The Victims of Child Abuse Act of 1990; Violent Crime Control and Law Enforcement Act of 1994; The Mandatory Victims Restitution Act of 1996; The Victim Rights Clarification Act of 1997; The Victims of Trafficking and Violence Protection Act of 2000.

<sup>24</sup> 28 C.F.R. §1100.31 (b) To improve the process of identifying victims and disseminating information to victims, U.S. Immigration and Customs Enforcement (ICE) employees drafted 28 C.F.R. § 1100, "Protection and Assistance for Victims of Trafficking." The regulation articulates government responsibilities for providing information to trafficking victims and for the training of federal staff in identifying victims and providing services. ICE is responsible for the publication of the regulation as a Final Rule and the Departments of Justice and State will jointly publish the Final Rule with DHS, which will include a new requirement provided in the 2005 TVPRA that states "to the extent practicable, victims of a severe form of trafficking shall have access to information about federally funded or administered anti-trafficking programs that provide services to victims of severe forms of trafficking."

<sup>25</sup> 22 U.S.C. 7109 connected to Federal crimes listed under 1589(forced labor), 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), 1591 (sex trafficking of children or by force, fraud, or coercion), 1592(unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), 1593(mandatory restitution), and 1594(general provisions).

Department of Justice Civil Rights Department, Federal Law Enforcement, and may also include the Federal Bureau of Investigation. The U.S. Attorney General's Office is obliged to provide protection and information to the victim. Under Chapter 224 in relation to witness protection the U.S. Attorney General's Office may provide the following: relocation and protection of a witness or potential witness and his/family or close associate(s), protection of the persons from bodily injury ensuring their health, safety, and welfare, psychological and social readjustment as long as the threat of danger exists, provide identification documents and the protection of their identity, housing, transportation of personal effects, payment of basic living and personal expenses, assistance to obtain employment, prosecution of person(s) who disclose protected information, establishment of accurate, efficient, and effective record keeping measures and written assessments for each case, securing the agreement of a victim for the application of protection measures and cooperation within the protection system, agreement to testify in criminal and/or other official proceedings and provisions to provide information to all appropriate law enforcement officials (informed consent), provide compensation in the event that death occurs to the victim(s) who are under the protection measures to the victim's estate, and assurances that each Federal agency will cooperate with the U.S. Attorney General's Office as deemed appropriate.<sup>26</sup>

### **U.S. Attorney General's Office**

The U.S. Attorney General's Offices were selected to provide witness protection because they represent the U.S. Federal Government's interests in local matters, and in most cases the United States Attorney represented strong community leadership, active support of law enforcement, and provided access to the leadership in Washington D.C., factors lending it to be essential towards the success of the program. As set forth in the Victim and Witness Protection Act of 1982 and other acts<sup>27</sup> pursuant to the U.S. Attorney General Guidelines for Victim and Witness Assistance, the Federal Government must ensure that the rights of the victims of severe forms of trafficking are protected, their dignity and privacy respected, and they are treated with fairness. During the prosecution stage of the process, it is the U.S. Attorney General's Offices, through their Victim-Witness Coordinators (herein after VWC)<sup>28</sup>, who are responsible for compliance with these mandates. Although concerning witness protection measures the U.S. Marshals Services are responsible for this form of protection and for ensuring that the victims, families, and close associates remain secure and safe.<sup>29</sup>

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<sup>26</sup> [www2.law.cornell.edu/uscode/uscode18](http://www2.law.cornell.edu/uscode/uscode18) crimes and criminal procedure [U.S.C. Title 18 Chapter 224 Protection of Witnesses]

<sup>27</sup> Other Acts include the Crime Control Act of 1990, the Violent Crime Control and Law Enforcement Act of 1994, the Antiterrorism and Effective Death Penalty Act of 1996, and the Victim Rights Clarification Act of 1997.

<sup>28</sup> The Victim Witness Programs are under the overall direction of the Deputy Attorney General. U.S. Attorneys from 14 districts comprise the Victim-Witness Subcommittees of the Attorney General's Advisory Committee of United States Attorneys. These subcommittees provide input to the Attorney General on law enforcement and victim-witness matters. Each individual district's Victim-Witness Programs are under the supervision of the United States Attorney. The Victim-Witness Coordinators may assist in managing local operations and coordinating activities within their district as directed by the United States Attorney.

<sup>29</sup> Emergency Victim/Witness Programs: The Department of Homeland Security (DHS) with funding from the Office for Victims of Crime (OVC), U.S. Immigration and Customs Enforcement's ("ICE") Victim-Witness

## **Witness Protection Program (WITSEC)/U.S. Marshals Service**

The Attorney General's Office in coordination with the U.S. Department of Justice is responsible for the administration of the U.S. Marshals Service, who provides witness protection within the WITSEC or Federal Witness Protection Program. WITSEC, or the Witness Security Program or Witness Protection Program, was established in 1970 under the Organized Crime Control Act. This act is the foundation upon which the U.S. Attorney General may provide for relocation and protection of a witness or potential witness, who is participating in a Federal or State Government official criminal proceeding that requires additional protection in connection with organized crime or other serious offenses.<sup>30</sup> These witnesses have agreed to testify in criminal trials and are protected against intimidation before and after their testimony. The U.S. Federal Government, depending upon the type of protection that is required, may relocate and provide new identities as well as provide financial and employment assistance. The U.S. Marshals Services alleges that "no program participant has ever been harmed while under the active protection of the service unless they failed to comply fully with the program."

The Federal Government allocates states grants enabling them to provide similar services to those offered at the federal level and the U.S. Marshals Services creates new documentation for the protection of victim's identity, assists with housing, employment, and financial assistance. Witnesses are not able to have contact with unprotected family members or former associates and are placed in new areas where they are not likely to be recognized. The general rule for the provision of witness protection is that it is provided for those witnesses on the basis that their testimony is *determined to be essential for a successful*

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Assistance Program operates a Federal Crime Victim Assistance Fund ("Fund") that is available to assist Special Agents in Charge ("SACs") with emergency services for victims of crime, including trafficking and related crimes, until they can be safely transferred to NGOs. The Office for Victims of Crime (OVC) special fund through a reimbursable agreement with the Executive Office for United States Attorneys provides emergency assistance and services to victims of federal crimes when needed services are unavailable through other sources. The Federal Crime Victim Assistance Fund (FCVAF), derived from the Victim of Crime Act (VOCA) funds, is designed to assist federal crime victims with services of an immediate nature. These services include, but are not limited to, transportation costs for victims to participate in judicial proceedings, emergency shelter, temporary housing, crisis intervention, and other services necessary to effectively respond to emergency needs of federal crime victims. The FCVAF is intended to be used when no other resources are available and state compensation efforts have been exhausted. To apply for FCVAF funds, districts should contact the LECC/Victim-Witness Staff of the Executive Office for United States Attorneys. Another tool in the prosecution of cases involving witnesses who have a perceived threat of danger in relation to testifying is the Emergency Witness Assistance Program (EWAP). This program, is available to witnesses who are going to testify in cases, but have a reservation about testifying, not an actual threat, however threats are to be treated seriously in coordination with the United States Marshal's Service and local law enforcement. The purpose of EWAP is to provide the U.S. Attorneys General's Offices with the flexibility to address a critical need: assistance to witnesses on an emergency basis to ensure their well being and those witnesses will be available for trial, other court proceedings, or activities on an ongoing case. The program also addresses a witness's or prospective witness's physical, mental or emotional reservations about participating in a specific matter before or after he or she has agreed to cooperate with, testify or be available for, the government. Each district has an implementation plan which further describes the uses of the funds.

<sup>30</sup> 18 U.S.C.A. 3521; many states have their own witness protection programs such as California/New York for crimes not covered by the Federal Program, however the state programs provide less extensive protection than the federal program.

*prosecution, that their testimony is considered credible, and that their life or life of family is at risk.*

Three organizations manage the witness protection program: the U.S. Marshals Service in terms of providing safety, health, and security; the Office of Enforcement Operations (hereinafter OEO) who authorizes admission into the program as a result of testimony against traffickers<sup>31</sup>; and the Federal Bureau of Prisons (hereinafter BOP) who maintains custody of incarcerated witnesses. The U.S. Attorney General's Office makes the final decision for all witness protection cases especially those defined under Title 18 of the U.S. Code Section 1961 (1) Organized Crime and Racketeering, where testimony given by a witness may place the witness in jeopardy, and other serious federal felonies for which a witness may provide testimony and is subject to retaliation by violence or threats of violence. These types of witnesses may also be known as "collaborators of justice" as a result of their previous involvement in organized crime activities.<sup>32</sup> It is important to mention, however, that victims of severe forms of trafficking are rarely placed in the WITSEC program, as they are reluctant due to the stringent conditions placed upon them.

### **Office of Enforcement Operations**

The OEO is responsible to ensure the oversight of the critical U.S. Department of Justice (hereinafter DoJ) functions entrusted by Congress and the U.S. Attorney General's Office. The OEO oversees the use, by the federal law enforcement community, including the United States Attorneys' offices, federal investigative agencies, and the sections and offices of the Criminal Division, of the most sensitive investigative techniques in the federal arsenal. One program within the OEO mandate is the "Entry into the Federal Witness Security Program and Oversight to Ensure the Ongoing Security of Program Witnesses and their Families." Information located on internet sites and through other secondary sources of information in relation to witness protection highlighted protection features for organized crime cases and specific reference to trafficked victims and protection was not elaborated. Given the timeframe and that this assessment was primary conducted in BiH only a few selected U.S. Federal Government Agency sources were interviewed concerning the application of witness protection in relation to victims of severe forms of trafficking and this information is highlighted later within this document.<sup>33</sup>

The Witness Security and Special Operations Unit (Witness Security and Special Operations Unit, OEO Criminal Division) Federal Witness Security Program is considered to be one of the most effective and successful weapons ever used in prosecuting persons and groups

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<sup>31</sup> The Office of Enforcement Operations and the U.S. Marshals Service agencies are under the administration of the Department of Justice.

<sup>32</sup> <http://polis.osce.org>: "collaborator of justice": a person who faced criminal charges or has been convicted for taking part in criminal associations or organizations or offenses of organized crime, but agrees to cooperate with the criminal justice authorities by providing testimony about the criminal association/organization connected with organized crime or other serious crimes.

<sup>33</sup> For example: U.S.Embassy personnel (FBI, DoJ, ICITAP, Organized Crime etc.)



involved in organized criminal activity.<sup>34</sup> The Witness Security Program claims that since its inception, no participant who has followed the Witness Security Program's rules has been killed or seriously injured as a result of his/her cooperation with the government. The U.S. Attorney General's Office designee, who is the Associate Director of the OEO, determines which individuals are accepted into the Witness Security Program, oversees the operations, and serves as an ombudsman for the participants. The Witness Security and Special Operations Unit (hereinafter WSSOU) within the OEO is responsible for managing the operational aspects of the Witness Security Program.<sup>35</sup>

Strict criteria must be established before a person is authorized for Witness Security Program services and used only as a last resort, when no other means will suffice to ensure that a key witness in a significant prosecution affecting the United States is kept alive. All applications for Witness Security Program services must be signed personally by the U.S. Attorney General's Office, which certifies that the U.S. Federal Government considers the case to be of significant importance to justify the extensive use of government resources required to protect the witness and his/her family members and/or close associates. The application must contain sufficient details, and must be accompanied by appropriate documentation, to ensure that four basic statutory mandated criteria are met: 1) the significance of the case must be clearly demonstrated; 2) the importance of the testimony that the witness will provide, and the lack of alternative sources for it, must be shown; 3) the existence of a bona fide threat against the life of the witness must be demonstrated; 4) assurance must be given—if the witness is to be relocated rather than incarcerated—that any danger the witness might pose to a new community is outweighed by the benefits to be gained by his or her testimony. As part of the overall evaluation process, the OEO seeks the input of experts, in each case, before determining whether Program services are warranted: 1) Attorneys from the appropriate litigating component of the U.S. Department of Justice weigh in on the significance of the case, including whether it merits the unique services of the Witness Security Program; 2) management personnel from the headquarters of the investigative agency sponsoring the witness must submit a threat assessment detailing the threat believed posed to the witness as a result of cooperation with the government. If the witness, or any of his/ her family members, are being relocated in a new community, the agency headquarters also provides an assessment of the risk posed to a relocation community, as well as whether the benefits to be gained from using the witness in the prosecution outweigh any such risk; 3) Inspectors from

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<sup>34</sup> The testimony of more than 8,000 protected witnesses during the past thirty-six years has resulted in the conviction of members of many major organized criminal groups. The Program was created in the 1960s, as a result of Attorney General Robert Kennedy's war against organized crime. In those days, it was difficult to prosecute members of major racketeering organizations because of the government's inability to protect witnesses willing to testify against such dangerous criminals. Criminal organizations were operating with relative impunity as a result of their ability, willingness, and access to financial resources necessary to intimidate and murder the few individuals who could testify against them. Originally created to overcome the reluctance of witnesses to cooperate against members of the La Cosa Nostra (LCN), the Program has proven itself flexible enough to meet the needs of the ever-changing nature and wide variety of witnesses whom it must serve. Today, such persons may be witnesses against the LCN, but it is more likely that they are cooperating against international or domestic terrorists, drug traffickers, violent street or prison gangs, or perpetrators of economic crimes.

<sup>35</sup> The WSSOU receives an average of 230 applications for witnesses to be admitted into the Program each year, and accepts approximately 160. Over 95% of the witnesses authorized are criminal associates of the major targets.



the United States Marshals Service (hereinafter USMS) conduct an interview of non prisoner witnesses, as well as any adult family member who is being sponsored for relocation, and provide an assessment of whether they are suitable candidates for the Witness Security Program. This interview, which allows the USMS to identify potential problems that might prevent successful relocation, is designed to ensure that the witness understands what services can and cannot be provided and that the witness understands his/her responsibilities as a participant; 4) Psychologists conduct an evaluation of each witness who is being sponsored for relocation, as well as any member sponsored to accompany him/her into the Witness Security Program. Participation is voluntary; however witnesses who fail to abide to the guidelines are subject to removal.<sup>36</sup>

A witness, who enters the Witness Security Program, maintains a unique and continuing relationship with the government. Once an individual is authorized for those services, the sponsoring representative must arrange any telephone calls, pretrial interviews, or other type of contact with the witness through the WSSOU. Even after subsistence allowances and other types of material support are terminated, investigative agencies and prosecuting attorneys, who desire to use their own witnesses must observe certain protocols and once a witness enters the Witness Security Program, neither the witness nor any family member can be used as an informant or witness in a new case without the prior approval of the OEO. It is a violation of federal law for anyone to disclose or disseminate any information concerning a witness placed in the Witness Security Program without the approval of the Witness Security Program Director and administration is pursuant to the provisions of the "Witness Security Reform Act of 1984."<sup>37</sup> Witnesses are also offered protection from prosecution in relation to information connected to criminal activities they are aware of during their testimony.

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<sup>36</sup> During the early days of the Program, most witnesses who were authorized for services were U.S. citizens. Today, a significant number of witnesses and their family members are foreign nationals. This requires OEO to coordinate their entry and participation with the Bureau of Immigration and Customs Enforcement (ICE) in the Department of Homeland Security, in addition to other agencies. Special Limited Services is a unique variation of the Program that allows foreign national witnesses who are subject to deportation, and who would be in danger if they returned to their home countries, to remain in the United States. Since these witnesses are not in danger in this country, full Program services are not required and are not provided. Special Limited Services may be extended to individuals who have been denied or are ineligible for an S Visa, or individuals who are facing imminent deportation or detention by ICE which poses a serious threat to them while an S Visa application is pending. As traditional jurisdictional boundaries have eroded, and crime has become increasingly international in scope, even many small nations have recognized the need for a mechanism to protect their witnesses. The Program's Director, Special Counsel, and WSSOU personnel, frequently provide guidance, expertise, and assistance to foreign governments who are interested in developing their own methods of providing security to witnesses.

<sup>37</sup> 18 U.S.C. §§ 3521-3528.

### **III. Bosnia and Herzegovina Witness Protection System**

#### **Introduction**

Bosnia and Herzegovina (hereinafter BiH) in terms of trafficking is a country of destination, transit, and increasingly of origin—due to the post conflict situation connected to the levels of: poverty, access and variety of marketable educational/training opportunities, public services, employment, domestic violence, and discrimination against women. However, a considerable number of activities have been undertaken and implemented to strengthen the institutional framework in order to more effectively combat all aspects of the phenomenon. The BiH Council of Ministers adopted the State Action Plan on Prevention of Human Trafficking in BiH on 06 December, 2001 (hereinafter Action Plan), and the State Commission, was established on 14 March 2002. This Commission was tasked to implement the Action Plan and the Council of Ministers issued a decision on 17 July 03 appointing a State Coordinator for Combating Human Trafficking and Illegal Immigration, whose primary task was to operationally monitor and coordinate the activities to implement the Action Plan and relevant counter trafficking activities among the domestic and international institutions in BiH.<sup>38</sup> In connection with this context, the Law on Movement or Stay of Aliens and Asylum was adopted on 06 October 03, and control of the visa regime was strengthened, particularly for citizens of countries where victims of human trafficking most often originate. Yet, numerous problems persisted in connection with the prosecution of traffickers. In response, the BiH Parliament (laws proposed by Presidency and approved by the House of Peoples and House of Representatives—legislative government branch) adopted two laws to be implemented by the state level institutions (executive & judicial government branches<sup>39</sup>) to provide increased protection and assistance to victims of trafficking when participating in official criminal proceedings. These applicable, laws are the BiH Witness Protection Program Law and the BiH Law on Protection of Witnesses under Threat and Vulnerable

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<sup>38</sup> Official Gazette (38/02). The National (State) Coordinator may appoint a Deputy National Coordinator and has the following duties: establishes contacts with other ministries (State, Entity/Brcko District and local bodies depending on the need); organizes national referral meetings; prepares reports for the Council of Ministers; appoints state officials/advisors to implement tasks (exchange information-preparation of plans-information-material)s from the 1) Ministry of Security two persons who should maintain contact with Trafficking Liaison Officers in the law enforcement-Interpol-border service-entity/district levels; 2) the Minister for Human Rights and Refugees one person who prepares the instructions on the treatment of victims of trafficking, cooperates with NGO's providing assistance, monitoring repatriation, organizes trainings and education with state/district/entity ministries regarding identification and protection of victims; 3) the Minister of Justice one person to prepare sustainable education programs for law enforcement/Judges/Prosecutors regarding new laws and application of (new) international standards; 4) the Minister of Foreign Affairs one person to follow the stability pact activities in relation to trafficking and collects information from other countries in the region; and 5) the BiH Prosecutor one person responsible to monitor progress related to trafficking cases and effective processing of cases. All of these officials with the National Coordinator prepare a yearly plan of activities to implement the National Action Plan approved by the Council of Ministers. The National Coordinator holds monthly meetings to follow progress in connection to the National Action Plan; to gather information to report every three months to the Council of Ministers; prepares annual reports and financial plans; organizes the national referral meetings; and suggestions directed to the Council of Ministers in relation to activities to more effectively combat against trafficking in human beings and illegal immigration.

<sup>39</sup> Council of Ministers—implemented by executive (Ministry of Security-SIPA) and judicial level government agencies (BiH Court & Prosecutor's Office).

Witnesses implemented by the Council of Ministers through the Ministry of Security under the State Investigation and Protection Agency (hereinafter SIPA) and the BiH State Court (Witness Support Office) and BiH State Prosecutor's Office.

#### **IV. BiH Legislation**

##### **BiH Constitution**

The BiH Constitution, adopted in December 1995 within the context of the Dayton Peace Agreement, is a comprehensive document “*based on respect for human dignity, liberty, and equality*” and “*determined to ensure full respect for international humanitarian law*”.<sup>40</sup> According to Article II the State is obliged to secure for all persons the enjoyment of rights and freedoms provided by the Constitution or international agreements<sup>41</sup> listed in Annex I, without discrimination on any grounds. In fact, the Constitution states in Article II paragraphs 2 & 3 that the European Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols “shall apply directly and have priority over all other laws and all persons within the territory of BiH, who shall enjoy the human rights and fundamental freedoms referred to in paragraph 2”.<sup>42</sup> Implementation of the human rights and fundamental freedoms referred to in paragraph 2 shall be the responsibility of the BiH courts, agencies, government organs, and other institutions.

##### **Applicable Human Rights International Conventions & Legal Instruments**

Bosnia and Herzegovina has ratified most of the United Nations (UN) documents on human rights protection in relation to the issue of protection of trafficked victims such as:

- 1) Protocol to prevent, suppress, and punish trafficking in persons, especially women and children, supplementing the UN convention Against Transnational Organized Crime (The Palermo Protocol<sup>43</sup>); protocol against smuggling of migrants by land, sea, and air.

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<sup>40</sup> [www.ccbh.ba](http://www.ccbh.ba) (BiH Constitutional Court)

<sup>41</sup> Universal Declaration on International Human Rights, CEDAW, CRC, CAT and the ECHR.

<sup>42</sup> Rights: a) to life; b) not to be subjected to torture or inhuman or degrading treatment or punishment; c) not be held in slavery or servitude or perform forced or compulsory labor; d) to liberty and security of person; e) to a fair hearing in civil and criminal matters and other rights related to criminal proceedings; f) right to private and family life, home, and correspondence; g) freedom of thought, conscience, and religion; h) freedom of expression; i) freedom of peaceful assembly and association with others; j) to marry and found a family; k) to property; l) to education; m) to liberty of movement and residence.

<sup>43</sup> Signed in Palermo on 13 December 00 and ratified by the BiH Presidency decision with entry into force on 27 March 02, Official Gazette of BiH No. 3/02 27 March 02 page 67. Article 24 of the UN Convention against transnational organized crime mentions witness protection—1) protection from potential retaliation or intimidation for witnesses including: physical protection, relocation of witnesses and non-disclosure of identity information, ensuring safety for example by testimony through IT/communications technology. Additionally see <http://en.wikipedia.org>: Convention against Transnational Organized Crime: In 2000 the [United Nations](http://en.wikipedia.org)

- 2) The Universal Declaration on Human Rights (UDHR).
- 3) 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR).
- 4) International Covenant on Civil and Political Rights (ICCPR) and 1966 and 1989 Optional Protocols Thereto.
- 5) 1979 Convention on Elimination of all forms of discrimination against women (CEDAW)<sup>44</sup>.
- 6) 1984 Convention Against Torture and other Forms of Cruel, Inhuman and Degrading Treatment or Punishment (CAT).
- 7) 1987 European Convention Against Torture and other Forms of Cruel, Inhuman and Degrading Treatment or Punishment.
- 8) 1990 International Convention for the Protection of Rights of Migrant Workers and their Family Members (ICPRMW)<sup>45</sup>.
- 9) 1961 Convention on the Reduction of Statelessness Convention on Legal Position of Stateless Persons (28 September 54).
- 10) 1951 Convention and 1967 Protocol relating to the Status of Refugees<sup>46</sup>.
- 11) International Labor Conventions prohibiting forced labor No. 29; migration for the purpose of employment No. 97; on Abolishment of forced labor No. 105; and on Migrant Workers No. 142<sup>47</sup>.
- 12) 1989 UN Convention on the Rights of the Child (CRC).
- 13) 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography.
- 14) 1999 Convention No. 182 of the International Labor Organization on Prohibition and Urgent Action to Eliminate the Worst Forms of Child Labor.
- 15) European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention)<sup>48</sup>.

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adopted the Convention against Transnational Organized Crime, also called the Palermo Convention, and the two Palermo Protocols thereto: 1) [Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children](#); and 2) [Protocol against the Smuggling of Migrants by Land, Sea and Air](#). All three of these instruments contain elements of the current international law on [trafficking in human beings](#). The convention and the protocols fall under the jurisdiction of the [United Nations Office on Drugs and Crime \(UNODC\)](#).

<sup>44</sup> „State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.“

<sup>45</sup> Pursuant to this Convention „States are obliged to recognise all migrant workers as „persons equal before the law“ and secure for them such things as access to legal protection and fair judicial proceedings.

<sup>46</sup> Article 14 of the Palermo Protocol instructs States & individuals to respect the 1951 & 1967 Conventions relating to the status of refugees ie a trafficked person may have a well founded fear of persecution and thus must have access to asylum procedures. These persons are to be protected from forceful return or expulsion to any border or territory where their life or freedom could be threatened.

<sup>47</sup> These Conventions oblige State parties to prevent forced or compulsory labor in any form. States agree that they cannot „impose or allow the imposition of forced or compulsory labor for the benefit of natural persons, companies or associations.“ Thus, States must adopt laws that ensure punishment of natural person who force others to work against their own will. Therefore these provisions can be applied effectively to trafficked victims.

<sup>48</sup> BiH Accession to the Council of Europe occurred in 2003. The European Convention is a regional commitment. Articles 3 prohibition of torture, inhuman or degrading treatment, or punishment; Article 4 Prohibition of Slavery and forced labor; Article 5 Right to Liberty and security of persons; Article 2 right to life; protocol 4 Freedom of Movement; Article 6 Right to a fair trial; Article 8 Right to respect private life; and Article 14 prohibition of discrimination.

- 16) Council of Europe recommendations No. R (2000)11; Rec. (2001)11; Rec. (2001) 18; No. R (1997) 13; Rec. (2002) 5<sup>49</sup>; Rec. (2005)9<sup>50</sup>.
- 17) European Convention on the Transfer of Proceedings in Criminal Matters<sup>51</sup>.
- 18) European Convention on the Compensation of Victims of Violent Crimes victim advocates/advisors & NGO's<sup>52</sup>.
- 19) United Nations General Assembly resolution 52/86 (annex) Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.
- 20) Council of Europe Convention on Action Against Trafficking in Human Beings (open for signature on 16 May 2005, signed by BiH).
- 21) Council of Europe Criminal Law Convention on Corruption<sup>53</sup>.

### **BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses**<sup>54</sup>

#### **General Provisions**

The purpose of this law is to regulate the provision of witness protection, for the protection of witnesses, who are deemed to be under threat and vulnerable witnesses in criminal proceedings conducted by the Bosnia and Herzegovina Court (hereinafter Court) and/or the Bosnia and Herzegovina Prosecutor's Office (hereinafter Prosecutor) involved in criminal offences over which the State Court has jurisdiction. Witnesses, who also may be victims may face serious risks when providing testimony and the constraints of concealing the identity of a witness in a small country like BiH can be challenging underscoring the acute need to ensure effective protection measures before, during, and after trials. The Law provides in Article 3 the definition of witnesses under threat and vulnerable witnesses in Paragraphs 1, 2 and 3:

- (1) A witness under threat is a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony.
- (2) A vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or suffers from a serious mental condition rendering him/her unusually sensitive, and a child and a juvenile."

<sup>49</sup> Action against trafficking in persons for the purpose of sexual exploitation; in relation to guiding principles in combating organized crime; subsidiary protection; in relation to witnesses under threat and the right to defense; on protection of women against violence.

<sup>50</sup> <http://polis.osce.org> Council of Europe Committee of Ministers Recommendation Rec (2005) 9 "need for member states to develop a common crime policy in relation to witness protection.

<sup>51</sup> BiH ratified on 26 July 2005

<sup>52</sup> BiH ratified on 24 April 2002

<sup>53</sup> BiH ratified on 30 January 2002

<sup>54</sup> ("BiH Official Gazette" No 3/03, 21/03, 61/04/, 55/05).

(3) A protected witness is a witness heard according according to Articles 14 to 23 of this Law.

Article 4 designates the Court as the body, who may order the application of witness protection measures: “The Court may order witness protection measures provided for within this Law as necessary, including more than one measure at the same time and these measures can not be more severe if the same effect can be achieved by a less severe measure(s).

Article 5 mentions that “the Court, Prosecutor, or other bodies participating in proceedings shall, ex officio, advise a witness deemed as vulnerable or under threat of the protection measures available under this Law. A witness under threat and a vulnerable witness is entitled to legal aid and has the right to assistance and support from social care bodies”.

### **Witness Protection Measures**

#### **Access to psychological, social, and professional assistance**

“Protection measures shall only be implemented with the consent of the witness. Witnesses, during investigations and after the indictment is issued, if he/she agrees should be ensured that the body responsible for social care is aware that the vulnerable witness involved in the proceedings is provided assistance and psychological support including the presence of appropriate professionals during examinations or hearings without disclosing the personal details of the witness.”

#### **Examinations, Testimonies, and using Technical Measures to Protect Identities**

“The Judge or Presiding Judge should exhibit the appropriate control over how witnesses are examined during questioning and ensure to protect witnesses from harassment and confusion. This includes the ability of the Court to pose questions directly to the witness on behalf of the parties and Defense.”

Furthermore, in the event that there are justified reasons to examine the witness using technical means to transfer image and/or sound so that the identity of the witness is protected so the Defense may question the witness from an alternate room from where the witness is located. In order that the witness may testify fully and correctly, the Court may order removal of the Defendant from the Courtroom and fair trial issues are ensured by providing other technical means so that the Defendant may follow the proceedings.

Testimonies given during the investigative phase may be protected and the Court should take into account the need to provide protection in the event that a vulnerable witness appearing during the proceedings would expose him/her self to significant distress or danger. Additionally, there are measures to protect the revelation of the witness’s personal details, which can continue after the indictment is issued—such as limiting the right of the Defense to inspect files/documentation. Furthermore, the Court may decide that the personal details of a witness remain confidential for a period not exceeding thirty years from the issuance of

the final verdict. Additional protection measures also can be applied towards the family of a witness (family is defined under the BiH Criminal Procedure Code in Article 83<sup>55</sup>).

### **Court Establishment of Witness Protection**

To determine if protection is required, the Court may call a hearing determining if the personal security of a witness and/or his/her family is at risk, is justified, and reviews the circumstances and proceedings how the witness should testify. Witness protection hearings are conducted according to the BiH Criminal Procedure Code on Hearing of Witnesses<sup>56</sup>, unless otherwise noted. Additionally, the witness should be informed that he/she will be “heard” as a protected witness, and that information related to his/her identity will be kept concealed. The only hearing that a protected witness attends is the protection hearing, since the witness should not appear in person before the Court or be compelled to answer questions that may indicate their identity or that of their family. Written records of protected witness hearings should not contain information related to the protected witness’ identity or the designated pseudonym issued by the Court or any information as such in all Court issued decisions.

Confidentiality employed measures are ensured by keeping protected witness records separate from all other documents related to the criminal case within a secure location when not in use in the hearing procedures and when the Court issues a final verdict. Long term archiving is used to secure records limiting access only to the President of the Criminal Division for a determined period not to exceed thirty years following the day the final verdict is issued.

### **Protected Witnesses’ Testimony**

During the main trial, testimonies from protected witnesses are presented verbally and the Court does not require the agreement of all parties to conduct this measure. Additional clarification and questioning of protected witnesses is possible and conducted in additional protection hearings in the event that proper establishment of facts is required. It is important to note that the Court is not able to convict solely upon the basis of evidence provided in protection hearings or through a protected witness, since further evidence must be presented.

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<sup>55</sup> Criminal Procedure Code of Bosnia and Herzegovina (“Official Gazette” of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05) Article 83 Persons Allowed to Refuse to Testify— (1) The following persons may refuse to testify: a) the spouse or the extramarital partner of the suspect or accused; b) *a parent or child, an adoptive parent or adopted child of the suspect or accused*; (2) The authority conducting the proceedings must caution the persons referred to in Paragraph 1 of this Article, prior to their hearing or as soon as it learns about their relation to the accused, about the right to refuse to testify. The caution and answer must be entered in records. (3) A person who has grounds to refuse to testify against one of the suspects or accused shall be relieved from the duty to testify against other codefendants if his testimony, by its nature, cannot be restricted solely to the other suspects or accused. (4) If a witness has been heard whose testimony is inadmissible or the person testifying has not been cautioned thereof or the caution has not been entered into records, the Court decision shall not be based on such testimony.

<sup>56</sup> Criminal Procedure Code of Bosnia and Herzegovina (“Official Gazette” of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05) Examination of Witnesses Section 5, Articles 81 to 91.

## **Confidentiality and Rules of Procedure Provisions**

Information acquired by official persons performing duties related to witness protection measures constitutes an official secret and unauthorized disclosure of such information is a criminal offence. Official(s) can not be requested to produce documents or divulge information before any Court, tribunal, or commission of inquiry. Additionally, disclosure of information is regulated by the BiH Freedom of Information Act, which can restrict personal data in connection with the processing of personal data for protected witnesses. Additionally, The Law on Personal Data was adopted in 2006 further regulating procedures in connection with personal data. Furthermore, the Court has yet to adopt rules of procedures guarantying means to protect witnesses as stipulated within this Law offering the appropriate protection and care.

### **BiH Witness Protection Program Law**<sup>57</sup>

The BiH Witness Protection Law was adopted on 01 March 03 and the primary purpose of this law is to provide effective protection for a witness during and after the criminal proceedings with the aim to enable a witness to testify freely and openly before the BiH Court. This Law defines a protected witness as a person without his/her testimony there would be no possibility to investigate or ascertain the facts or would be much more difficult. A *witness* must consent to protection measures and/or his/her family and/or otherwise a close person defined by the BiH Criminal Procedure Code Article 83<sup>58</sup> may also be protected in the event that they face danger to their life, health, or freedom as a result of their testimony and if they are suitable for witness protection measures. This protection can also be applied even after the termination of the proceedings if the possibility for danger still exists.

The Witness Protection Department (hereinafter WPD) within SIPA is authorized to take independently all decisions related to the application of protection after conducting an assessment of the circumstances for a witness taking into consideration the extent of the risks and the rights of the accused when implementing any protection measures. Agreement, until the completion of the criminal proceedings, must be taken with the BiH State Prosecutor's Office related to the commencement and cancellation of witness protection. The WPD must

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<sup>57</sup> BiH Witness Protection Program Law (Official Gazette of Bosnia and Herzegovina, No. 29/04 entry into force 01 March 03).

<sup>58</sup> Criminal Procedure Code of Bosnia and Herzegovina ("Official Gazette" of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05) Article 83 Persons Allowed to Refuse to Testify— (1) The following persons may refuse to testify: a) the spouse or the extramarital partner of the suspect or accused; b) *a parent or child, an adoptive parent or adopted child of the suspect or accused*; (2) The authority conducting the proceedings must caution the persons referred to in Paragraph 1 of this Article, prior to their hearing or as soon as it learns about their relation to the accused, about the right to refuse to testify. The caution and answer must be entered in records. (3) A person who has grounds to refuse to testify against one of the suspects or accused shall be relieved from the duty to testify against other codefendants if his testimony, by its nature, cannot be restricted solely to the other suspects or accused. (4) If a witness has been heard whose testimony is inadmissible or the person testifying has not been cautioned thereof or the caution has not been entered into records, the Court decision shall not be based on such testimony.



also consult, if applicable, with the respective Head of the Penal Institution in the event that implemented decisions impact the execution of pre-trial detention, imprisonment, or other deprivation of liberty decisions. The WPD is also authorized to implement protection measures related to the presence of a foreign witness as agreed between BiH and the witnesses' foreign State. Foreigners, who are participating in the Witness Protection Program can not be expelled or deported without the authorization of the WPD.

The mandate of the Head of the WPD is to establish the Witness Protection Program and he/she is ultimately responsible to protect the safety and welfare of witnesses during and after the criminal proceedings. The Head is also obliged to issue annual reports to the Director of SIPA and the Ministry of Security.

The WPD processes the personal data on protected witnesses and these files should not be included in the investigative files and must be kept confidential, although these records can be requested by the BiH Prosecutor's Office upon their request. The identities of the WPD personnel executing their official duties is considered to be an official secret and disclosure of such information or that connected to a witness including transfers of information between public/private agencies is not to harm, interfere or be disclosed even beyond termination of the witness protection program measures.

Public agencies at the request of the WPD may produce or alter temporarily the identity of those included in the Witness Protection Program and cancellation is authorized by the WPD. Furthermore, persons who may be participating in different proceedings than the one where cover documents are produced are entitled only to provide information on his/her previous identity and may refuse to provide information in connection with his/her current residence, present personal details, and whereabouts.

### **BiH Criminal Procedure Code**<sup>59</sup>

The Bosnia and Herzegovina Criminal Procedure Code designates numerous duties in connection with the protection of witnesses<sup>60</sup>. These procedures are included in the main trial in the sense that Presiding Judges should exercise control over the order and manner in which witnesses are examined during testimony to protect witnesses from harassment, confusion, insults, threats, attacks, and inappropriate questioning<sup>61</sup>. In the event that the threat is serious the Presiding Judge should inform the Prosecutor to implement a criminal prosecution procedure and order police protection for the witness if any of the parties petition this decision. The Presiding Judge, during any stage of the examinations, may pose appropriate questions to witnesses.

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<sup>59</sup> OSCE Mission to Bosnia and Herzegovina Trial Monitor & BiH Criminal Procedure Code ("Official Gazette" of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05).

<sup>60</sup> BiH Criminal Procedure Code: Articles 235, 236, 236 (1), 236 (3), 262 (3), 267, 267 (3), 267 (4).

<sup>61</sup> BiH Criminal Procedure Code: Questions must be relevant and admissible, deceit is prohibited, as well as leading questions during direct examination or during cross examination irrelevant to those presented during the direct examination (Articles 86 (7), 262, 262 (3), and 263)

The Presiding Judge may also exclude the public from all or portions of the trial, to protect the personal and intimate life of the witness or accused (or if the witness is a minor) after hearings involving all parties<sup>62</sup>. Information from such closed hearings is considered to be secret and disclosure by parties or others is subject to criminal prosecution.

Additional protection is provided for victims of sexual violence and it is not allowed to question injured parties concerning their sexual experience prior to the alleged criminal offense or in connection with sexual behavior to prove his/her predisposition. Thus far, victims of sexual violence according to BiH State Court Practice are treated as vulnerable witnesses and should receive additional protection(s) as those contained in the BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses.<sup>63</sup>

Repetition of witnesses testimonies is prohibited and the Presiding Judge may decide that the witness shall not be heard again and that the testimony/testimonies be read into evidence unless the trial is adjourned for longer than 30 days or the trial is held before a different Presiding Judge meaning the trial must commence from the beginning and all evidence be presented again.<sup>64</sup> Witnesses have the right to legal representation and to file compensation claims against the accused and both the Presiding Prosecutor and Judge are obligated to ask witnesses whether they have filed a compensation claim in the criminal proceedings and if they have not that the witness may do so prior to the close of the main trial.<sup>65</sup> Additionally, Judges have residual powers to protect witnesses stemming from the principle of material truth mandating that Judges and Prosecutors as well as other bodies participating in the proceedings must “objectively study and establish equal attention towards facts that are exculpatory towards the accused” and “ensuring that the subject matter of the trial is fully examined, the truth is found, and that everything is eliminated that prolongs the proceedings that does not serve to clarify the matter”.<sup>66</sup>

The implementation of the BiH Criminal Procedure Code incorporated a more adversarial nature into the criminal procedures and Judges directly involved are the actors often most capable of protecting the interests of the witness since the Prosecutor’s and the Defense have independent and competing interests that may not be aligned with those of the witness. “Protection ultimately of the witness relates also to the preservation of evidence, to the

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<sup>62</sup> Exclusions of the public from all or portions of the main trial are subject also to constraints and limitations set by the European Court of Human Rights—meaning that exclusion is only to be implemented if other protective measures will not be effective and necessary after considering the rights of the Defendant and public.

<sup>63</sup> BiH Criminal Procedure Code Article 86 (5) protects rape victims from harassment and humiliation in particular regard to the psychological and socio-cultural implications of sexual violence and the need to avoid stigmatization of the victim. Consent of the victim may not be used in the Defendant’s favor according to Article 264 (3) and further reference to the Council of Europe Recommendation No. R (85) 11 of the Committee of Ministers to member States on the position of the victim in the framework of criminal law and procedure (28 June 1985) C8 should be referred to: “At all stages of the procedure the victim should be questioned in a manner which gives due consideration to his/her personal situation, rights, and dignity”.

<sup>64</sup> BiH Criminal Procedure Codes: 251 (2), 251 (3), 317 (2)-appellate division.

<sup>65</sup> BiH Criminal Procedure Codes: 84 (5), 236 (1), 242 (3), 295 (3), Chapter XVII Claims under Property Law Articles 193-204 and 86 (10) and 258 (4).

<sup>66</sup> Ibid Articles 14, 273, and 239 (2).

proper administration of justice, and must be reasonable, proportionate, and not offensive to the law.”

### **Rules on Protection of the Victims and Victim-Witnesses of Trafficking in Human Beings, Citizens of BiH<sup>67</sup>**

The BiH Council of Ministers issued a decision in July 07 adopting “The Rules on Protection of the Victims of Trafficking in Human Beings and Victim-Witnesses of Trafficking in Human Beings, Citizens of BiH” (hereinafter Rules). According to Article 26 entry into force of this decision will be published in the Official Gazette of BiH and activities as defined within Article 24 realized within six (6) months from the date when the Rules are entered into force according to the relevant BiH Official Gazette (currently pending publication). Any amendments thereafter should be submitted to the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in BiH according to Article 25. These Rules provide the long awaited legal basis establishing assistance and protection mechanisms for BiH citizens, who are victims of trafficking such as those adopted previously for alien victims.

#### **General Provisions**

Article 1 establishes the common standards and principles of action related to the following procedures: 1) identification; 2) organization of protection and assistance; 3) primary and secondary prevention; and other activities concerning the protection and provision of support for the victims of trafficking in human beings and victims-witnesses of trafficking in human beings for BiH citizens (hereinafter victim-witnesses) implemented by the BiH authorized institutions.

Definitions are underscored in Article 2 with the first (1) outlining what constitutes trafficking<sup>68</sup>; the second (2) who may be a victim-witness;<sup>69</sup> the third (3) who is a victim<sup>70</sup>;

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<sup>67</sup> Decision issued by the BiH Council of Ministers on 02 July 07, pending Official Gazette publication.

<sup>68</sup>In accordance with the Palermo Protocol supplemented by the UN Convention Against Transnational Organized Crime: “Trafficking in human beings shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall particularly include the exploitation of other persons through prostitution or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. The trafficking in human beings shall also include criminal offences such as: setting up any form of slavery and the transportation of persons imposed to slavery, smuggling of persons, and international recruitment with the view to prostitution and illegal deprivation of identification documents, as set forth in the BiH Criminal Code. Furthermore, trafficking shall encompass the felonies of trafficking in human beings with the aim of prostitution, exploitation of children for pornography, production and screening of children pornography, inducement to prostitution and familiarizing children with pornography, as set forth in the BiH Criminal Codes of the BiH Entities and Brcko District of BiH.”

the fourth (4) the definition of who is considered to be a child (a person who has not reached 18 years of age); the fifth (5) the responsible institutions as “the state, entity, canton, and municipal bodies and institutions as the prescribed-by-law competences to coordinate and conduct activities related to prevention and combating trafficking in human beings and illegal immigration in BiH<sup>71</sup>; the sixth (6) the authorized organizations who are the registered associations, foundations, and non-governmental organizations that provide protection and assistance to victims and victim-witnesses and have concluded protocols with the BiH authorized institutions; and the seventh (7) what behavior is constitutes discrimination. Article 3 sets out the action principles and approach to the provisions of assistance and protection such as: non-discrimination and human rights compliance; protection of privacy; protection of the best interests for children; a multi-disciplinary approach and cooperation/exchange of information throughout all phases of the proceedings and finding the best solution for each case concerned; as well as confidentiality of information.

### **Initiation of Procedures and Identification**

Reporting of cases-either under suspicion or those concretely determined should be directed to SIPA and/or the authorized prosecutor’s offices for the entities and the Brcko District. Furthermore, adults can seek assistance as a victim or victim-witness in any of the authorized institutions or organizations as mentioned above. Cases involving children may be reported by a parent, guardian, or any other persons taking care of the child.

Article 5 explains in very general terms how the Rules of information exchange should be conducted; feedback related to resolving cases; the provision of aid and assistance; the collection of statistical data; the issuance of reports; the obligation to inform guardianship bodies regarding violations of children’s rights including the obligation to report such information to social welfare, prosecutor’s offices, police departments, healthcare institutions, educational institutions, employment bureaus, registry offices, counseling centers, institutions for the protection of children and youth, homes for neglected children, and any other private/public institutions intended for child care. Concerning adult victims and victim-witnesses the competent Prosecutor’s offices or police department may only inform social welfare centers with the consent of the victim/victim-witness. The Ministry of Internal Affairs, should through diplomatic consular posts, for BiH citizens report this information to the authorized BiH Prosecutor’s Offices and cooperate with the host country consular services to collect data on each individual case. Additionally, all cases involving

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<sup>69</sup>“A victim-witness is a person whose personal safety or safety of his/her family is jeopardized due to his/her participation in a/the procedure, as a result of threats, intimidation or similar acts connected with his/her testimony (the witness can be both victim and victim-witness of trafficking in human beings)”.

<sup>70</sup> “A victim is any physical person who is/has been subjected to trafficking in human beings, pursuant to Article 1.”

<sup>71</sup> The BiH competent institutions—Ministry of Security, State Investigation and Protection Agency (SIPA), Interpol of BiH, the State Border Service, the State Prosecutor’s Office and Court, Ministry of Civil Affairs, Ministry of Justice, Ministry of Foreign Affairs, and the entity, canton, municipal institutions and organizations as well as those authorized departments for the Brcko District for internal affairs, social, family, and health protection, science and education, displaced persons and refugees, gender centers, courts and prosecutor’s offices.

adults must be reported to the authorized institutions irrespective of whether the victim and victim-witness provided their consent.

The collection of data should be unified within a central database and used during the victim identification process storing information not only concerning victims but also regarding perpetrators. The format of this database is under the development and the ultimate management of SIPA. SIPA will compile the statistical information and the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration will have access and utilize this database as an additional tool to implement The BiH National Action Plan to Combat Trafficking in Human Beings and Illegal Immigration. All police departments are obligated to deliver on a periodic basis data on trafficking criminal offenses.

Identification of victims and victim witnesses should be conducted according to a “multi-disciplinary” approach and the protection procedures initiated with the consent of the victim/victim-witness during the voluntary interview procedure. The provision of assistance is obligatory in coordination with social welfare centers and health care institutions—including mental health institutions, who should conduct a physical and psychological assessment prior to conducting the interview with the victim/victim-witness. In the event that a child is involved a social welfare center representative or parent/guardian must be present during the interview procedure and social welfare centers and parents/guardians may request legal aid.

### **Protection—Protection Measures**

The types of protection listed under Chapter I for victims and victim witnesses are: individual and physical protection, legal aid, social and health protection, drug abuse treatment, special protection for children and vulnerable categories. The forms that compose the individual protection are mentioned in Article 8 and refer to: physical, privacy and identity, legal aid, social and health, education, re-socialization and special measures for children as well as other individual needs to assist the victim and victim witnesses. Individual protection is considered to be interdependent for each case after incorporating the victim and victim witness’s age, health condition, gender, national minority affiliation, social status, and medical examination.

Furthermore, information related to potential physical endangerment under Article 10 should be verified in order to apply *enhanced protection measures* and consideration on whether it is prudent for the victims/victim witnesses to return to his/her residence after the suspension of protection or in the event that the victim/victim witness is not willing to return alternative solutions should be implemented by the relevant BiH institutions (Prosecutor’s Office, law enforcement, and social welfare center). The social welfare center in cooperation with local law enforcement is responsible to conduct risk and safety planning assessments to ensure that secondary victimization does not occur as well as defining the timelines connected with the heightened protection including how information will be transferred confidentially.

An interesting differentiation separates victims/victim witnesses that are placed in the Witness Protection Program (as protected and/or endangered witnesses) as excluded from the

Rules for the duration of time that they are included in the Witness Protection Program and the Rules should be applied after the termination of the specialized protection. Additionally, irrespective of the criminal proceedings status and in the event that failures occur to launch these proceedings, if there is sufficient evidence to consider that a person is a victim/victim witness protection should be implemented and approved by the relevant social welfare center requesting assistance from the competent local law enforcement department.

Legal aid providers are obliged to provide victims/victim witnesses with information related to the criminal and administrative procedures and to ensure that the victims/victim witnesses receive social protection, compensation, as well as other rights and that their views are considered and heard throughout all processes against the perpetrators.

Social protection institutions are authorized to provide professional and social assistance, accommodation, therapy and advisory services, as well as inclusion into re-socialization programs in accordance with the laws regulating BiH social protection. Accommodation is considered as housing or facilities providing shelter for trafficked persons and victims of violence (shelters or safe houses), with families or foster families, and institutions of social and child protection. Victims/Victim Witnesses, who are considered to be in social need, are eligible for one-time payment financial assistance and the Rules do not further include any provisions in connection with on-going financial or social assistance nor any additional elaboration of compensation programs/services. Re-socialization plans should be prepared on an individual basis according to the needs of the victim/victim witness and should include additional training, education, employment and/or other social measures in coordination with the other authorized BiH institutions and organizations. Health protection should be financed by the Ministry of Human Rights and Refugees through the funds for special purposes and provided in the event that victim witnesses do not have health care coverage. Inclusion into drug therapy treatment programs is available on a voluntary basis performed by BiH institutions and non-governmental organization providing those services.

Vulnerable categories are considered victims of domestic violence or sexual and gender violence, mentally impaired persons, the elderly, and displaced-deported-returnees. These categories of victims/victim witnesses should be prioritized and provided additional protection from specialized institutions according to Article 16. The rights of children should be considered in light of their best interests and cases of trafficking involving children should receive a temporary appointed guardian. Measures to terminate parental rights should be initiated in the event that there is evidence to suggest that the parent(s) or guardians of the child participated in the trafficking as set forth in Article 15.

### **Implementation of Protection Measures**

As mentioned above, protection measures should be planned and implemented with the social welfare center or authorized institution with the consent of the victim/victim witness and in Article 17 the specific responsibilities for social welfare centers are mentioned as: 1) organize cooperation with the parents of children; 2) coordinate with the Prosecutor's Office and law enforcement for monitoring and providing physical protection; 3) establish one high-risk shelter for such protection; 4) provide information to the Prosecutor's Offices and law

enforcement allowing that the victim/victim witness viewpoints and concerns are expressed and considered during all phases of the proceedings; 5) coordinate concerning progress related to the case, contacts with the victim/victim witness for interviews; 6) estimation of injuries and ensure evidence on maltreatment; 7) identify assistance and resources; 8) prepare protection plans; 9) ensure adequate accommodation or institutions; 10) request legal aid; 11) empower victims/victim witness by demanding permanent solutions and planning re-socialization programs including health rehabilitation—as well as appoint a focal point to monitor the program and its implementation. Secondary prevention of victims/victim witnesses is mentioned under Chapter III Article 21 and states that social welfare centers and institutions, when implementing the above activities should prevent possibilities that the victims/victim witnesses become trafficked again. Non-governmental organizations, who have signed protocols with BiH institutions, will support the above endeavors and the BiH diplomatic consular office will be responsible for the issuance of documents and the return of BiH citizens and children located in other states.

### **Prevention Measures**

Prevention, organized information, and programs to reduce prejudice will be conducted as outlined (Articles 18 to 21) in the 2005-2007 prevention program within the BiH State Action Plan for Combating Trafficking in Human Beings and Illegal Immigration by the designated institutions in order to improve the knowledge and understanding of trafficking in human beings and during inspection of facilities inspection departments and/or legal/physical persons are required to deliver information in connection with suspected or known trafficking activities.

### **Coordination of Activities**

The State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration is authorized in Article 22 to coordinate the activities set out within these Rules at the state level and SIPA is responsible for implementation at the regional levels in the four SIPA regional offices located in Mostar, Tuzla, Banja Luka, and Sarajevo. These local regional teams will include representatives participating with SIPA at the regional level such as the Prosecutor's Offices, law enforcement, social and health center offices and any appointed, authorized institutions located in those regions. Each regional team will appoint a Regional Coordinator, who will be responsible for the creation of protection and referral programs for victims/victim witnesses. The State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration jointly with the Ministry of Human Rights and Refugees will establish a monitoring team to supervise the implementation of the Rules.

### **Financing**

Funding of the coordination of the activities defined by the Rules under Article 23 will be partially allocated from the Program of Special Purposes within the resources of the BiH Ministry of Security distributed to the State Coordinator for Combating Trafficking in

Human Beings and Illegal Immigration and financial allocations for the establishment of regional teams and referral system should be provided by the competent BiH institutions or from other sources (private, public, international organizations, donors, and others). The special purpose fund within the Ministry of Human Rights and Refugees will secure the resources for the social, health, accommodation and care of witnesses, re-socialization and prevention programs.

### **Transitional and Concluding Provisions**

The State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration and the State Thematic Group for Protection will design a standardized questionnaire, which will be used to establish the status of a victim/victim witness. The Ministry of Human Rights and Refugees will, until a law is passed in BiH designating a system of free legal aid, will conclude protocols with non-governmental and other institutions for the provision of legal aid services as well as protocols regulating conditions of care for victims/victim witnesses with the authorized institutions and instructions on standards of conduct for all civil servants coming into contact with victims/victim witnesses including standards for the provision of accommodation. State border services and law enforcement units should set up registries to register births of children, children working as street workers, any attempts of unaccompanied children crossing the border or in the company of unauthorized persons and this information should be submitted to the central database managed by SIPA and the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration.

### **V. BiH Operation & Responsible Officials**

#### **Witness Protection Department: State Investigation & Protection Agency (SIPA)**

The Law on the State Investigation & Protection Agency was adopted on 04 May 04<sup>72</sup> establishing SIPA and regulated its competence and organization as a policy body as mentioned in Article 1 and within Article 2 as an administrative organization within the Ministry of Security (hereinafter MoS) of BiH with operational autonomy created to perform police tasks and financed from the “Budget of the Institutions of BiH and International Obligations of BiH”. The competences in relation to witness protection are outlined in Article 3: paragraph 1 “prevention, detection, and investigation of criminal offences falling within the jurisdiction of the BiH Court especially those related to organized crime, terrorism, war crimes, trafficking in persons, and other criminal offences against humanity, and values protected by international law, as well as serious financial crimes”; paragraph 3 “assistance to the BiH Court and Prosecutor’s Office in securing information and execution of the orders of the BiH Court and of the Chief Prosecutor”; paragraph 5 “witness

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<sup>72</sup> The High Representative’s decision enacting the Law on amendments to the Law on the State Investigation and Protection Agency was published in the Official Gazette of BiH 63/04.



protection”; paragraph 6 “implementation of international agreements on police cooperation and of other international instruments that fall within the scope of its competence”; and paragraph 7 “criminal expertise”. In Article 2 SIPA is obliged to process data and keep records in accordance with the “BiH Law on Police Officials” and the “BiH Law on the Protection of Personal Data”. Police Officials employed within SIPA are able to apply police powers in accordance with the “BiH Law on Police Officials as authorized according to the “BiH Criminal Procedure Codes”.

In terms of reporting, SIPA reports to the Council of Ministers (hereinafter CoM) and the Directors are appointed by the CoM’s according to the “BiH Law on Police Officials”. The Directors are obligated to submit reports concerning the work of SIPA to the CoM’s and to ensure cooperation among the law enforcement agencies and other appropriate bodies in BiH and those competent in foreign states. Departments are mentioned in the second section under Article 11 Structure—composition of SIPA. There are seven departments: 1) criminal investigation department<sup>73</sup>; 2) financial intelligence department; 3) department for protection of persons and objects; 4) witness protection department (hereinafter WPD); 5) special support unit; 6) internal control department; and 7) other lower organizational units established by the Rulebook on Internal Organization. Other units also coordinate with the seven departments such as the internal organization and systemization unit; the Operational Support Service whose duties include surveillance, wiretapping, and forensics; and the Centre for Investigation of War Crimes and Crimes Punishable under International Martial and Humanitarian Law—each with their own Head managing the operations.

The Witness Protection activities are within Article 17 as— “Duties of the Witness Protection Department”: The Witness Protection Department shall carry out protection of witnesses in accordance with laws and other regulations of BiH on witness protection”. However, under Article 20 “Additional Duties of Each Department” it is stated that “in addition to the duties of departments prescribed by this Law, each department shall perform other duties as prescribed by the Rulebook on Internal Organization”. International cooperation is listed under Article 23 as: “1) SIPA may co-operate with foreign law enforcement and other foreign appropriate bodies, for the purpose of fulfilling its tasks under this Law. The co-operation may include the exchange of data and joint execution of the activities that fall within the scope of SIPA’s competence; 2) SIPA may provide foreign law enforcement and other foreign appropriate bodies with data on citizens of BiH based on information that the citizen poses a danger to the security of BiH, the receiving State or a broader danger to regional or global security; 3) In criminal matters, the co-operation with foreign law enforcement agencies shall be conducted through the Office for Co-operation with Interpol; 4) Notwithstanding Paragraph 2 of this Article, SIPA shall not provide data on citizens of BiH unless it has reasonable assurance that the recipient will provide the data with the same level of protection as provided in BiH; and 5) If the data related to the criminal

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<sup>73</sup> The Criminal Investigation Department should work on a) detection and investigation of criminal offences falling within the jurisdiction of the BiH Court locating and capturing of the perpetrators of these criminal offences and bringing them before the Prosecutor, under the supervision of the and pursuant to the guidelines and directives issued by the Prosecutor in accordance with the criminal procedure code; b) work on the prevention of criminal offences; c) provide operational assistance to the Financial Intelligence Department; d) collect information and data on criminal offences, observe and analyze the security situation and phenomena conducive to the emergence and development of crime; and e) organize and conduct criminal expertise.

proceedings instituted in BiH, the exchange of data referred to in this Article shall be carried out in accordance with the criminal procedure code.

SIPA is one of the responsible authorities to provide witness protection and can independently after conducting an assessment of the circumstances in terms of the gravity of the offence and risk extent, the rights of the accused, and the impact of the measures applying protection in coordination with the BiH State Prosecutor's Office, recommend the application and cancellation of protection.<sup>74</sup> The Witness Protection Department also decides on and implements measures that should be taken concerning a foreign witnesses present in BiH under an agreement or condition (multi and bi-lateral agreements) between BiH and a foreign state in relation to witness protection.

The Head of the WPD is responsible for establishing and maintaining the witness protection program providing protection towards witnesses during and after the criminal proceedings, which includes any other family members or close associates as deemed necessary as mentioned above. Personnel that are employed within the WPD, conducting and administrating duties associated with WPD program are allowed to use “assumed” names and have identity documents under these designated name(s).

Records concerning the protected witness’s personal data are kept in the department, classified as confidential, and should not be included in the investigation file. These records are available to the BiH Prosecutor’s Office and both the Prosecutor’s Office and the WPD are obliged to provide information connected with protection during the criminal proceedings as mentioned in the BiH Criminal Procedure Code within Article 82<sup>75</sup>.

There are measures to protect data regarding personnel working in the WPD and for witnesses<sup>76</sup> and transfers or exchanges of data within public and non-public agencies should not compromise the witness protection information. In fact, the public and non-public agencies should inform the WPD without delay of requests to release data designated to them. The public agencies, as requested by the WPD, are producing the documents altering temporarily the identities (cover documents) of the protected witness (and WPD employees) allowing the witnesses to participate in the legal proceedings and it is the responsibility of the WPD that the witnesses can be contacted for those procedures. The WPD informs the public

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<sup>74</sup> Witness Protection Department decisions could have an impact on the execution of pre-trial detention, imprisonment, or other measures related to the deprivation of liberty and can only be taken after consultation with the head of the respective prison—this aspect is present also in the U.S. Witness Protection Laws.

<sup>75</sup> Criminal Procedure Code of Bosnia and Herzegovina (“Official Gazette” of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05) Article 82 Persons Not To Be Heard As Witnesses—The following persons shall not be heard as witnesses: a) A person who by his statement would violate the duty of keeping state, military or official secrets until the competent body releases him from that duty; b) A defense attorney of the suspect or accused with respect to the facts that became known to him in his capacity as a defense attorney; c) A person who by his statement would violate the duty of keeping professional secrets, including the religious confessor, professional journalists for the purpose of protecting the information source, attorneys-at-law, notary, physician, midwife and others, unless he was released from that duty by a special regulation or statement of the person who benefits from the secret being kept; d) A minor who, in view of his age and mental development, is unable to comprehend the importance of his privilege not to testify.

<sup>76</sup> Provisions not to release information or data about witness constituting public secrets and the identities of WPD employees.

agencies of cancelled protection measures and withdrawal of the “cover documents”. The WPD must be informed by witnesses of all third party claims against the protected witness, which should remain unaffected by the protection measures.

Allowances for the purposes of witness protection that are provided by the WPD will be granted only to the extent necessary to apply witness protection and withdrawn in the event that they were granted upon the provision of false information provided deliberately. Witnesses that should be questioned in different criminal proceedings are entitled to provide only information related to their former identity and can refuse to provide information in connection with their current personal details and whereabouts. In the event that a protected witness is a foreigner he/she can not be expelled or deported without the approval of the WPD.<sup>77</sup>

The SIPA WPD provides witnesses with the WPD contact information in the event that risks to their safety develops and if the danger appears to be imminent the WPD contacts the police where the witness lives to provide emergency assistance pending the arrival of its Protection Officers. The WPD, according to BiH Court officials, is not in a position to systemically follow up on all protected witnesses due to the lack of resources, and most witnesses *lack the expertise to assess if they are at risk and they may in fact not be aware if their safety is threatened*. This is especially concerning since there is an absence of effective protection measures at the Canton and District level courts. The WPD provides assistance to the Canton and District Courts on an ad-hoc basis although there is no legal obligation to do so, which means witnesses face significant risks in those areas.

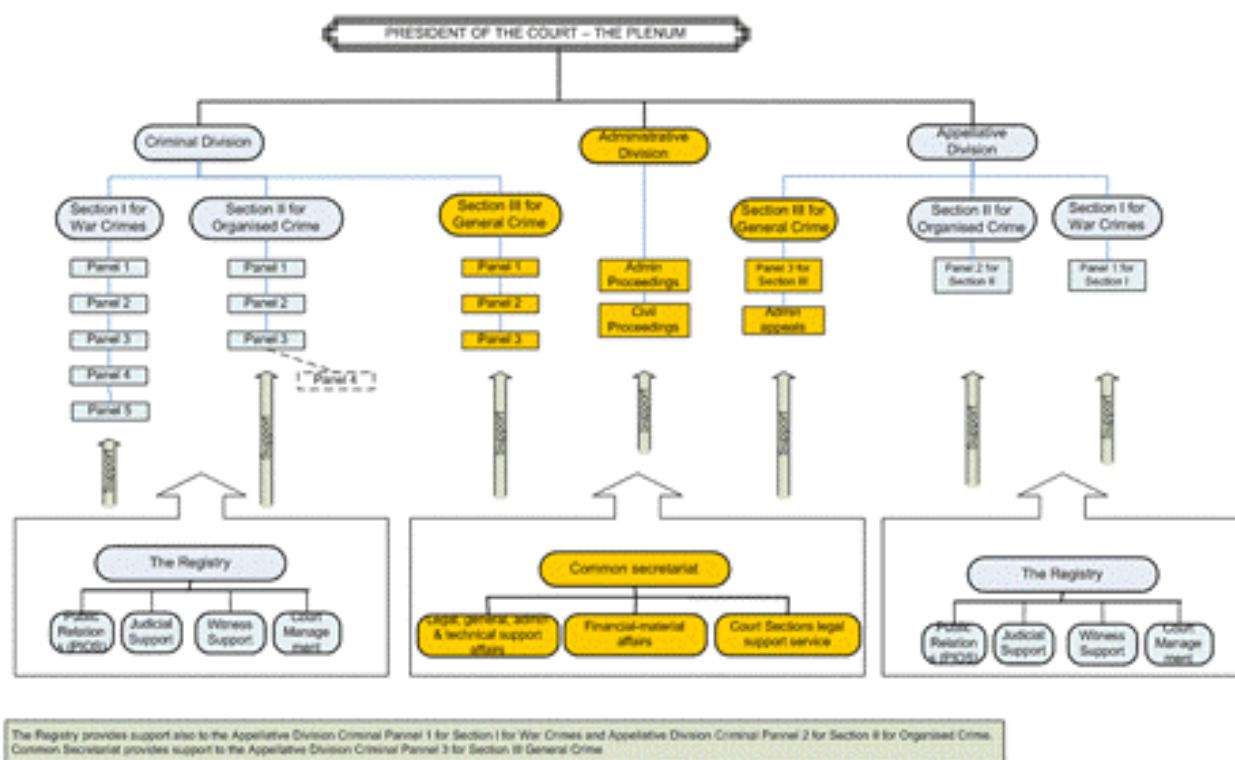
During the post-indictment phase the BiH Court Witness Support Office (hereinafter WSO) provides support to the Prosecution and Defense witnesses, however as it can not intervene in the pre-indictment phase there is no support offered to potential witnesses during that phase. In order to address this shortcoming the BiH Court established the position of a Witness Liaison Officer (hereinafter Liaison Officer). The Liaison Officer refers victims and potential witnesses to organizations providing mental and physical rehabilitation services if necessary and after the indictment is confirmed the WSO takes the responsibility for those witnesses, who will provide testimonies and the Liaison Officer is responsible to facilitate the smooth transfer of information.<sup>78</sup>

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<sup>77</sup> Law on Movement or Stay of Aliens and Asylum: Chapter V-Removal of an Alien From The Country, Part D Article 62 paragraph 3—If there exists reasons for forcible removal of the alien prescribed in this Law, the alien shall not be forcibly removed if so being in the interest of conducting the court proceedings where the alien shall appear as a Plaintiff, an injured party, or a witness, being a victim of trafficking of human beings or any other form of an organized crime or where the alien shall cooperate with authorities in revealing crimes and their offenders. The alien shall be granted residence prescribed in Article 34 paragraph 2 of the present Law for as long as these circumstances are present.

<sup>78</sup> Narrowing the Impunity Gap-Trials before Bosnia’s War Crimes Chamber” Volume 19.No. 1 (D) February 2007 [Human Rights Watch [www.hrw.org](http://www.hrw.org) ] page 35-38.

## **Bosnia and Herzegovina State Court —Jurisdiction, Organization, and Structure**



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### **The Court Registry**

The BiH State Court Registry is managed by a Registrar, who is responsible in coordination with the Court President for the administration and provision of administrative, legal, and other support services for the Criminal and Appellate (Sections I & II) divisions. The Registry has five organizational units<sup>80</sup> and the Witness Support Section is the one who is

<sup>79</sup> <http://www.sudbih.gov.ba> Jurisdiction, organization and structure of the Court of Bosnia and Herzegovina are regulated by the Law on Court of Bosnia and Herzegovina.

<sup>80</sup> <http://www.sudbih.gov.ba> The five units are: the Legal Department which provides legal support to Judges and Section I & II panels conducting their activities under the law; the Court Management Section manages the daily operation of the Court; the public information and outreach section is responsible for media, public/external contacts with the Court; Administration is providing administrative support for Sections I & II (IT, translation, and practical support services; as well as the Witness Support Section who provides when deemed necessary the psychological support towards witnesses testifying before the Court.

providing support to the two Sections in the event that witnesses require practical and psychological support during their testimony in Court. A Working Group (hereinafter Group) was formulated to address issues related to the Court's use of protective measures composed of judiciary representatives, the Registry, and the Witness Support Office. This Group was established to review the obligations outlined in the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses in Article 24 obligating that the Court "adopt rules of procedure to ensure the appropriate use of means to protect witnesses". The majority of the cases concern war crimes cases due to the number and pressure to process these cases. However, additional focus and prioritization should develop among the Court Registry and the Witness Support Office to address also the needs of trafficking cases and those victims.<sup>81</sup>

SIPA is the institution responsible for protection of witnesses outside of the courtroom in war and organized crime cases and financial and technical support is provided by the Registry. However, SIPA's ability to provide the required resources to support the Witness Protection Department are limited, which is why SIPA signed a Memorandum of Understanding (hereinafter MoU) on 01 March 05 with the State Court Registry in order to coordinate activities related to witness protection. The MoU states that the Witness Protection Support Unit was established within the Registry to provide the technical and material assistance to the SIPA Witness Protection Department. This includes a secure office location, equipment, staff, training, and assistance from an international Witness Protection Advisor.<sup>82</sup>

### **Court Witness Support Office**

The Bosnia and Herzegovina Witness Support Office (WSO) provides support and assistance to witnesses before, during, and after trials to ensure that the experience of testifying does not result in additional trauma for any witness. The Office coordinates with the SIPA Witness Protection Department on particular issues for example on anonymity and the level of protection for protected witnesses. The WSO strives to operate with the highest level of impartiality and confidentiality and all information shared by the witness received by the section is treated in a professional way and referred to the party who called the witness. In this regard, a brochure explaining court procedures for witnesses testifying before the Court of BiH was designed and is available. The WSO also helps to organize visits of victim associations to the BiH State Court.

The WSO involvement with witnesses commences after the confirmation of an indictment has been issued and made public. The WSO reviews the list of witnesses to identify potential vulnerable persons and requests background information from the Prosecution and Defense. The witness's are contacted and the office provides information regarding the functions of

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<sup>81</sup> "Narrowing the Impunity Gap-Trials before Bosnia's War Crimes Chamber" Volume 19.No. 1 (D) February 2007 [Human Rights Watch [www.hrw.org](http://www.hrw.org)]

<sup>82</sup> "Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina" Volume 18, No. 1 (D) February 2006 page 29 and "Narrowing the Impunity Gap-Trials before Bosnia's War Crimes Chamber" Volume 19.No. 1 (D) February 2007 [Human Rights Watch [www.hrw.org](http://www.hrw.org)] page 20, 35

the office.<sup>83</sup> Assessments review the witness's social and psychological requests and the witness's health, family, and financial situation. The role of the WSO is to advocate for the witness and a staff member is present in the courtroom during the proceedings. This advocate can also provide information in relation to a witness's stress level to the Prosecutor and Judge(s). The office responds to requests from the Prosecution and Defense Counsel concerning possible negative effects on a witness after he/she has testified. The WSO can provide financial assistance for witnesses with special needs to facilitate the provision of testimony.<sup>84</sup>

The WSO conducts updated threat assessments to determine if protection measures are necessary after the completion of hearings. In exceptional cases relocation outside of BiH for a witness and his/family is possible and the Witness Protection Support Office has concluded several agreements with other States to facilitate logistical arrangements for the relocation of witnesses. The WSO contacts witnesses 15 days after the witness has testified to assess her/his mental health and the witness can contact the office using the 24 hour contact number. In the event that psychological assistance is requested the WSO has established contacts with mental health professionals, who are familiar with the strict confidentiality requirements.<sup>85</sup>

### **Court Support Network**

In 2005 the BiH State Court Registry established "The Court Support Network" (hereinafter CSN) to provide information and guidance to potential witnesses who may appear as witnesses in war crimes cases. The program selected three (3) NGO's responsible for managing regional phone centers in Sarajevo (Zene Zenema), in Prijedor (Izvor), and in Tuzla (Referentna Grupa). The premise was that potential witnesses could contact these phone centers and receive information and raise awareness concerning the BiH State Court. Each of the NGO's should then contact other institutions and organizations to form "referral networks" whereby trained operators could direct callers according to their specific questions or needs. The BiH State Court Registry planned to expand the program to eight (8) regional centers to cover the entire BiH territory.

However, to date the CSN has not been successful and only two NGO's are still engaged Izvor in Prijedor and another located in Mostar (Centre for Civil Initiatives).<sup>86</sup> The NGO's that disengaged themselves, allegedly felt that the cooperation with the BiH State Court Registry was not sufficient and rather than forming a program through joint consultation, the NGO's stated that the Registry imposed the network idea upon them. The initially engaged

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<sup>83</sup> The WSO also explains the impact of testifying (including the potential of re-traumatization), the court process, the right to request breaks during the proceedings, and viewing of the courtroom in advance-a 24 hour phone contact number for the WSO is provided in the event that additional concerns or questions arise.

<sup>84</sup> "Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina" Volume 18, No. 1 (D) February 2006 page 31-33.

<sup>85</sup> "Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina" Volume 18, No. 1 (D) February 2006 page 33.

<sup>86</sup> Centre for Civil Initiatives at the time of this report, is promoting a poster campaign in the Mostar area directed at potential war crimes witnesses advocating for their participation as witnesses in war crimes cases.

NGO's work with women victims of violence and, unfortunately felt that the BiH State Court activities which focused on war and organized crimes cases was beyond the scope of their activities, and thus found little incentive to invest substantially in the network.

One of the regional center NGO's stated that the call centre receives very few phone calls regarding war crimes and has primarily been used by other NGO's seeking information about their counterparts in the region. The few witnesses, who did call, were hesitant to provide any information over the phone and preferred to speak to a person in the NGO office. This NGO recently conducted a media campaign promoting its call centre, however no follow up connected with the impacted results has been conducted.

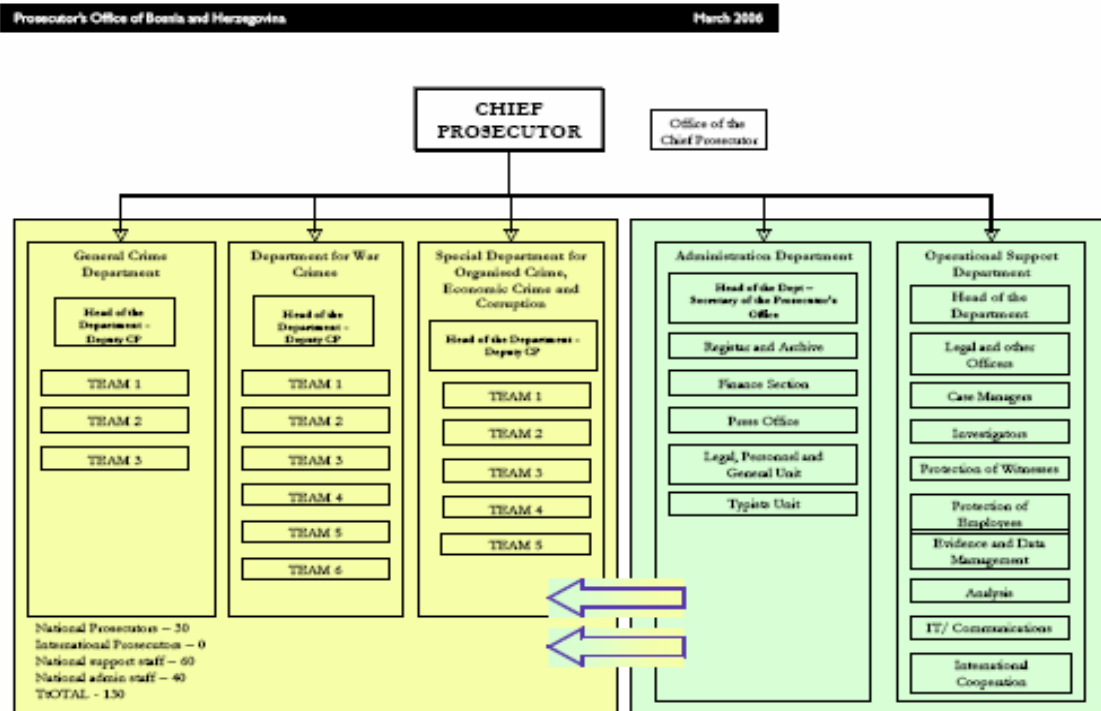
### **Court Management Section**

The Court Management Section provides support services for the BiH Court, which consists of a Trial Support, Information, and Records Team<sup>87</sup>. Some of the main functions of the Court Management Section relate to coordination with the Witness Support office in order to ensure witness protection measures such as: the provision of integrity and security of information; design and implementation of technological courtroom and trial support systems together with the Information Technology Section; operation of electronic systems and case-related databases ; preparation of trial records and facilitation of the recording of court proceedings (such as minutes, transcripts, audio and video recordings); maintenance of simultaneous interpretation facilities in all three languages for trials with international participants; and coordination of the use of technological systems to ensure efficient and smooth conduct of trials.

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<sup>87</sup> Supervision of reception, processing, archiving and distribution of documents, cases and all court files of Section I and Section II (including case-files, evidence submitted in proceedings and archives); provision of case coordination systems; provision of integrity and security of information; operation of electronic systems and case-related databases ; preparation of trial records and facilitation of the recording of court proceedings (such as minutes, transcripts, audio and video recordings); preparation and management of the statistics on the Court operation; operation of the Court schedule and management of the use of courtrooms; design and implementation of technological courtroom and trial support systems together with the Information Technology Section; operation of an automatic case allocation system for the entire Criminal Division; maintenance of simultaneous interpretation facilities in all three languages for trials with international participants; coordination of the use of technological systems to ensure efficient and smooth conduct of trials; provision of support to the President of the Court and judges in the planning and management of trials, as well as the work of sections generally.

## The Bosnia and Herzegovina Prosecutor's Office



*Tuzilastvo-Tužilaštvo Bosne i Hercegovine ; Kraljevice Jelenje 88; tel: +387 33 707 400 ; fax: +387 33 707 465*

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The BiH Prosecutor's Office (hereinafter Prosecutor) , as a state prosecutorial institution commencing with its duties in January 2003, has jurisdiction over war, economic, financial, corruption, terrorism, money laundering, organized, international smuggling, trafficking, and all other crimes under its jurisdiction. In March 2005 the Special Department for War Crimes of the BiH Prosecutor's Office was created prosecuting war crimes investigations transferred from the International Criminal Tribunal for the Former Yugoslavia<sup>89</sup> and those launched in BiH. Additionally, the Special Department for Organized, Economic, and Corruption Crime established by a decision issued by the High Representative for BiH in March 2003, prosecutes crimes associated with terrorism, smuggling, tax evasion, customs

<sup>88</sup> [www.tuzilastvobih.gov.ba](http://www.tuzilastvobih.gov.ba)

<sup>89</sup> The BiH Prosecutor's Office continues to be assisted by the ICTY Office of the Prosecutor, and a Memorandum of Understanding Between the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia and the BiH Special Department of the Prosecutor's Office was concluded in September 2005 stipulating mutual cooperation in relation to Requests for Assistance, access to documents, access to witness statements, contacts with witnesses and witnesses with protective measures, access to expert reports etc.



fraud, money laundering, forgeries, and other offenses such as trafficking of human beings and drugs.

### **BiH Prosecutor's Office Agreements, Protocols, and Memorandums**

The BiH Prosecutor's Office also cooperates internationally with countries in the region in terms of fighting various crimes and this is reflected in the framework of the international Southeastern Europe Prosecutors Advisory Group (SEEPAG), regional Southeastern European Cooperative Initiative pursuant to the Memorandum of Cooperation of Prosecutors from the Western Balkans within the CARDS program and the European Program on Cooperation of Prosecutors (CPGE) and network for cooperation of judiciary of the European Union (EUROJUST).<sup>90</sup>

On 30 March 05 the BiH Prosecutor's Office signed a MoU with the State Prosecutor's Offices located in Macedonia, Albania, Croatia, Serbia, and Montenegro, and other Western Balkan countries agreeing to cooperate in the areas of preventing crimes, conducting investigations, and criminal prosecution of organized criminal associations. This coordination utilizes exchanges of data, documents, and evidence and the signatories committed to assess their national regulations and practices with the aim of improving the legal frameworks and mechanisms to fight more effectively against organized crime. Implementation is achieved by designating contact points in each of the Prosecutor's Offices in each country as part of a widespread regional prosecution network of contact points that are signatories to the MoU. Furthermore, the BiH Prosecutor's Office has signed a number of bilateral agreements on cooperation with the Prosecutor's Offices in the region due to the increase of crimes associated with smuggling and trafficking of human beings, corruption, international terrorism, illicit drug trade, and money laundering to mention just a few.<sup>91</sup>

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<sup>90</sup> <http://www.tuzilastvobih.gov.ba> (Memorandum of Understanding Memo (PDF) ;Protocol on Agreement in Establishing Mutual Cooperation in Combating All Forms of Serious Crime between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina; Memorandum on Agreement to Achieve and Advance Mutual Cooperation in Fighting All Forms of Severe Crime between Public Prosecutor's Office and War Crimes Prosecutor's Office of the Republic of Serbia and Prosecutor's Office of Bosnia and Herzegovina; Protocol on Agreement to Achieve Mutual Cooperation in Fighting All Forms of Severe Crime between Supreme State Prosecutor of the Republic of Montenegro and Prosecutor's Office of Bosnia and Herzegovina)

<sup>91</sup> 1) „Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the State Attorney's Office of the Republic of Croatia and the Prosecutor's Office of Bosnia and Herzegovina“ signed in January 2005; 2) „Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the Supreme State Prosecutor of the Republic of Monte Negro and the Prosecutor's Office of Bosnia and Herzegovina“ signed in May 2005; 3) „Protocol on Agreement in Achievement and Improvement of Mutual Cooperation Fighting All Forms of Organized Crime, Illicit Trade in Narcotics, Smuggling People, Trade in Weapons, Corruption, Money Laundering, International Terrorism, War Crimes and Similar Matters of Mutual Interest Between the Prosecutor's Office of the Republic of Serbia and the Prosecutor's Office of Bosnia and Herzegovina“ signed in July 2005; 4) Protocol on Agreement in Achievement and Improvement of Mutual

In terms of domestic cooperation The Prosecutor's Office in June 2005, signed an agreement of coordination with BiH institutions from the Field of Intelligence, Security and Police Activities (Ministry of Defense, Ministry of Security, the State Investigation and Protection Agency (SIPA), the Border Police, and others to improve protection of security and territorial integrity within BiH fighting against all forms of grave crimes. Especially important was the Memorandum of Cooperation signed in October 2005 between the Prosecutor's Office and SIPA focused on violations of international humanitarian law.

### **Strike Force to Fight Against Trafficking in Human Beings & Illegal Immigration**

The Council of Ministers issued a decision establishing the Strike Force to Fight Against Trafficking in Human Beings and Organized Illegal Immigration responsible to cover the territory of BiH.<sup>92</sup> The Strike Force is an operational body established to support communication/coordination of activities among the state, entity, and Brcko District authorities<sup>93</sup> to more effectively combat against trafficking in human beings and illegal immigration. The Strike Force cooperates with the BiH State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration, the European Police, the U.S. Department of Justice personnel located in the U.S. Embassy in Sarajevo, International Criminal Investigative Training Assistance Program (hereinafter ICITAP), The International Organization for Migration, non governmental organizations<sup>94</sup>, and others monitoring the protection of trafficked victims. Additionally, the Strike Force should hand over their mandate and responsibilities to SIPA when SIPA is considered to be fully operational.

The BiH Chief Prosecutor manages the Strike Force and the force has the competence to ensure cooperation among the responsible bodies and organizations, conduct investigations, and form operational investigation teams collecting and exchanging data related to trafficking cases and illegal immigration with the specific purpose of prevention. The Strike Force includes two expert representatives from the Prosecutor's Office from the Special Department for Organized, Economic, and Corruption Crime Unit. In July 2005 "The Procedures for Treating Victims of Trafficking in Human Beings in BiH were created in alignment with the UN Convention on Transnational Organized Crime and its Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (hereinafter UN Convention on Transnational Crime) as well as other international conventions and protocols. In reference to witness protection it is mentioned within Article

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Cooperation Fighting All Forms of Grave Crimes signed between the Office of the Public Prosecutor of the Republic of Macedonia and the Prosecutor's Office of Bosnia and Herzegovina" signed in March 2005.

<sup>92</sup> Decision issued on 30 October 03 on the basis of Article 17 of the Law on the BiH Council of Ministers. (BiH Official Gazette 30/03).

<sup>93</sup> Representatives include the State, Entity, and Brcko District: Prosecutor's Offices; Internal Affairs, Ministries of Interior; taxation bodies, Financial Police; SIPA & Border Police; and all of those, who should contribute activities to fight against trafficking of human beings and illegal immigration.

<sup>94</sup> NGO's: Association of the Humanitarian Organizations in International Forum of Solidarity, the Association of Women of BiH Mostar, the Organization of Women "Lara" from Bijeljina, Foundation "La Strada" Bosnia and Herzegovina, the Centre for Therapy of Women "Medica" Zenica, the Association "Vaša Prava".

24 of the UN Convention on Transnational Crime that protection is applied in the event that potential retaliation or intimidation for witnesses include: physical protection, relocation of witnesses and non-disclosure of information concerning identity, ensuring safety of the witness by permitting testimony be given through communications technology.

During the investigation phase the Prosecutor can apply protective measures for witnesses under the Criminal Procedure Code (CPC) Article 217 (1)<sup>95</sup> and during the protection hearing the identity of the witness is known only to members of the Court. A pseudonym is assigned for purposes of the trial record and the Defense does not receive information related to the witness's identity. The Defendant, according to the Law, may not be convicted solely upon testimony provided by a protected witness as mentioned previously and closed hearings are used as one method to protect and diminish the chances of re traumatizing witnesses.

## **VI. Comparison between the U.S. Federal & BiH Witness Protection Models**

Bosnia and Herzegovina and the United States of America have both adopted regulations, laws, plans, and procedures focused on providing assistance and protection for victims of trafficking in human beings and if applicable for their families/close associates. These laws and procedures are implemented by various stakeholders within those countries respective executive and judicial government agencies. The primary differences involve the number of actors involved at the executive/judicial government levels, allocation of financial, technical, and logistical resources, the development of an extensive network of service providers that under the United States Federal laws are obliged to provide assistance from both the Federal and State levels of government as a mandatory right without placing emphasis on the immigration and/or residency status connected with the victim, and active, comprehensive implementation leading to successful delivery of assistance and protection measures. The United States Federal System has enacted a monitoring and evaluation system and conducts research by an independent body. Both of those mechanisms contribute on a continuous basis to improve the existing system and the government creates new activities at both the domestic and international levels to fight against trafficking and as well to aggressively prosecute those responsible for trafficking people and/or connected to traffickers. Furthermore, both Bosnia and Herzegovina and the United States have a number of criminal laws and procedures in place to prosecute traffickers.

The United States adopted the TVPA 2000 on 28 October 2000 which authorized the establishment of a government strategy fighting trafficking in human beings, the President's interagency task force, a mechanism categorizing trafficking as a federal crime de-facto

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<sup>95</sup> Criminal Procedure Code of Bosnia and Herzegovina ("Official Gazette" of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05) Article 217 Conducting an Investigation— (1) In the course of investigation, the Prosecutor may undertake all investigative actions, including the questioning of the suspect and hearing of the injured party and witnesses, crime scene investigation and reconstruction of events, undertaking special measures to protect witnesses and information and may order the necessary expert evaluation.

considered as an organized/serious crime providing assistance and protection at the federal and state levels for both domestic and alien victims, their families, and close associates. The TVPA offers the “minimum allowable standards” in terms of assistance/protection and specifically outlines actions that should be undertaken against traffickers, authorizes & identifies the responsible service providers to deliver a wide range of services, and allocates substantial financial appropriations while promoting a “victim centered approach”.

Likewise the Bosnia and Herzegovina Council of Ministers adopted the State Action Plan on Prevention of Human Trafficking on 06 December 2001 (revised again at the end of 2004 to cover the period of 2005 to 2007) establishing the framework to increase the effectiveness to combat trafficking, the State Group, which is policy making body on 14 March 2002, and the State Coordinator to Combat Human Trafficking and Illegal Immigration in 2003. Additionally, the Council of Ministers created a Strike Force composed from a number of state level agencies, which were to monitor and coordinate activities related to the Action Plan among the domestic and international institutions located in BiH. The Action Plan outlines responsible authorities in general terms; however the international community and other donors remain the primary source of financial support—although BiH continues to increase the amount of financial resources every year. The financial support available unfortunately falls short of what is necessary and the international community continues to monitor the process and promote the process of implementation, and in terms of developing the majority of the activities. Domestic stakeholders have yet to take full ownership of the process and government structures due to continued political problems remain— weak, fractionalized, and fraught with allegations of complicity in trafficking activities and corruption, which provides mixed, poor results in terms of successful prosecution and effective, comprehensive provision of assistance and protection towards trafficked victims.

Bosnia and Herzegovina state law enforcement agencies place counter trafficking and trafficking related offences under their organized and serious crimes strategies, however assistance and protection continues to be regulated more towards alien victims. This hopefully will now change, given that the Council of Ministers issued a decision in July 2007 adopting Rules on Protection of The Victims and Victim-Witnesses of Trafficking in Human Beings, Citizens of BiH. Bosnia and Herzegovina is obliged—according to a number of ratified United Nations Treaties and Conventions—to promote a human rights/victim centered compliant approach towards protecting and offering assistance to trafficked victims, however as mentioned above implementation falls far short of these international and domestically protected—per the Constitution—standards. These standards are the minimum core obligations that Bosnia and Herzegovina as a state must undertake to progressively realize and implement these rights. Furthermore, regulation of residency and immigration status remains a contingent factor connected with assistance rights and participation within the prosecution procedures in terms of witness protection measures. The procedures for the delivery of assistance and protection are not institutionalized rather are distributed on an ad hoc basis that varies from case to case. The development of (identification of victims/threat & vulnerable victims) assessment tools utilizing non discriminatory criteria should be created and distributed to all agencies involved in offering assistance and protection, as well as mechanisms to offer assistance and protection to both alien and domestic victims irrespective of where they are identified within the country and of their immigration status. Furthermore,

deliverance of technical, financial, and logistical resources should be made available throughout the country especially as the entity (cantons, districts, and municipalities) do not have access nor do they comprehend what is expected of them in terms of their assistance/protection roles, nor do they perceive themselves as having the ability or responsibility to implement the procedures & laws protecting the rights of both alien/domestic victims.

Considering witness protection measures themselves, both countries have procedures and laws in place to offer different forms of protection to victims of trafficking. The United States offers measures associated with placement within shelter facilities, relocation, identity protection (both inside and outside of the courtroom), social and psychological services, translation, legal aid/representation, civil and criminal restitution, basic living allowances, training and education, employment, regulation of residency and immigration status, accurate data protection systems, written and threat assessment procedures, prosecution for disclosure of protected information, and reintegration/social readjustment programs.

Bosnia and Herzegovina offers placement within shelters, relocation (resettlement in coordination with the International Organization for Migration—very little information is available regarding external programs and internal programs do not formally exist), informal identity protection (inside and outside of the courtroom), social and psychological services (either through shelter providers or through the State Court Witness Support Office), translation, legal aid/representation (again through the State Court Witness Support Office or with Vasa Prava, who is a nongovernmental legal aid provider, civil and criminal restitution procedures (although Judges rarely pursue these measures), regulation of residency and immigration status, data protection systems with prosecution procedures in place for disclosure of protected information (again rarely enforced), and assessment of risks and threat (no written procedures developed with criteria).

However it appears in many cases despite the progress that has been made, Bosnia and Herzegovina continues to pursue the very minimum (and often less so) allowable standards<sup>96</sup> of assistance and protection, protection and assistance procedures are not developed for alien and domestic victims at the Entity, Canton, District, or municipal levels, the development of a rulebook connected to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses regulating protection and care is not adopted, there are no guidelines for government agencies in relation to assistance, protection of witnesses, or pursuant to a victim referral mechanism, substantial financial allocations at the State level should be introduced, a more comprehensive human rights/victim centered approach should be implemented, increased efficiency and identification of victims, mistakes connected with disclosure of information and identities of victims under protection should be eliminated and prosecution enforced when this occurs, efficient and vigorous prosecution of traffickers and those

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<sup>96</sup> Factors & criteria to consider to determine whether a country is making significant progress to bring itself into compliance with the minimum standards: 1) whether a country is a country of origin, transit, or destination; 2) the extent of government non compliance-government officials complicity/facilitated/or condoned in trafficking; 3) reasonable counter trafficking measures in light of the country's resources and capabilities; 4) percentage of non citizen victims insignificant; 5) monitoring and publically assessing anti trafficking efforts; 6) progress in eliminating trafficking compared to the previous year; 7) provision of data by the government. U.S. TVPA 2000 [www.protectionproject.org](http://www.protectionproject.org)

involved in trafficking including more stringent application of sentencing measures, introduction of restitution cases within the civil and criminal prosecutions ex officio for victims and for the State in terms of securing funds, seizure of assets and/or property, secure and access to rights associated with health, psychological, and social assistance for victims through harmonization of the respective laws [(social, health, employment & training, education, and concerning the criminal and criminal procedure codes) , reintegration/socialization programs within the country, access to employment, training, or educational programs (some shelters offer minimal life skills training in fields associated with cosmetology, tailoring, etc), basic living allowance financial payments)] and substantially improved communication and coordination is needed—between entities/state/cantons/districts/municipalities, as well as the codification of a transnational referral mechanism including *regional placement of victim/witness coordinators* acting as advocates for victims. Bosnia and Herzegovina also needs to address cross-cutting issues associated with trafficking such as: gender mainstreaming, an increased child sensitive approach, as well as domestic violence and sexual violence against women.

## **VII. Compilation of Meetings with BiH State Witness Protection Providers**

Meetings were held with ten different witness protection stakeholders<sup>97</sup> and the below enclosed is a compilation of practices concerning how the current witness protection and assistance system functions among the state level stakeholders. Included are some recommendations that should be implemented to improve the BiH Witness Protection System. Additionally, further within this document are suggestions on how to create a BiH Victim Witness Coordination System that would be a component of the BiH Witness Protection System and national referral mechanism. Only one stakeholder could discuss witness protection for trafficked victims (for the purpose of sexual exploitation) and this was the BiH State Protection Investigation Agency Director of the Witness Protection Department. The Head mentioned that the WPD provided protection previously for approximately 15 to 20 victims and those cases received protection in the same manner that other protection cases do. The other stakeholders were not familiar with protection of trafficking cases and/or mentioned that the shelter providers conducted this scope of work. The BiH State Deputy Chief Prosecutor and Head of The Special Department for Organized Crime, Economic Crimes, and Corruption investigates smuggling cases, however these

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<sup>97</sup> 1) The U.S. Embassy Representative working with Department of Justice Office of Prosecutorial Development, Assistance, and Training Program (OPDAT); 2) BiH State Court Witness Support Office-International Advisor & Witness Liaison Officer; 3) BiH State Court Senior Legal Counsel; Representatives from International Criminal Investigative Training Assistance Program (ICITAP); 4) BiH State Court Deputy Chief Prosecutor and Head of The Special Department for Organized Crime, Economic Crimes, and Corruption; 5) BiH State Court Judge representing the BiH State Court Witness Protection Working Group; 6) BiH State Court Prosecutor's Office Registrar—Special Department for Organized Crime, Economic Crimes, and Corruption (SIPA); 7) ICITAP International Advisor's for the BiH State Protection and Investigation Agency Witness Protection Department; 8) European Union Police Mission Representatives who are the BiH State Court Special & Witness Protection Advisors for the Witness Support Office & Liaison with the SIPA Witness Protection Department; 9) EUPM Crime Advisor's for the SIPA Witness Protection Department; and 10) The SIPA Witness Protection Department Director.

involve primarily economic and illegal migration issues. This is why the information contained within the interviews does not particularly highlight assistance and protection concerns for trafficked victims for the purpose of sexual exploitation. Furthermore, this is an indicator, based upon the priorities associated with the prosecution of war crimes<sup>98</sup> and could be one of many reasons why witness protection associated with trafficked victims for the purpose of sexual exploitation failed in the past<sup>99</sup>. It is clear that the majority of those involved in the capacity building of the country's witness protection program need to consider and implement additional special features associated with protection for trafficked victims and definitely this must be done if prosecution of domestic trafficking (and high profile organized crime) cases are to be more successful in the future.

### **Bosnia and Herzegovina (BiH) State Court Witness Support Office**

The BiH State Court Witness Support Office (hereinafter WSO) located in the BiH State Court is the only court in Bosnia and Herzegovina providing a formal witness protection program and that has a Witness Support Office. This court is the only court that allocates financial, technical, and logistical resources implementing a type of assistance and protection program for witnesses<sup>100</sup> that are to testify in the court's proceedings and this is why cases located within the entity, district, and canton levels that require witness protection are transferred to this court. The BiH State Court WSO believes that it provides excellent support for witnesses and after receiving a witness list from the BiH State Prosecutor's Office the office conducts an assessment for each witness to determine if they are vulnerable and if so the level of support and assistance they require. The State Protection and Investigation Agency conducts a risk assessment<sup>101</sup> for those witnesses considered to be under threat after receiving a written request to do so from the BiH State Prosecutor's Office.

The WSO coordinates protection for all witnesses with the SIPA Witness Protection Department through a formal MoU, since SIPA receives financial and logistical support from the State Court WSO. The WSO provides all witnesses with a 24-hour telephone number to contact the WSO in the event that a witness has concerns or requires additional support. The WSO stressed that almost all witnesses request assistance for additional health care, social

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<sup>98</sup> The third "acknowledgement within the MoU signed between the BiH State Court & SIPA WPD notes the following: "acknowledging the positive impact that the efficient prosecution of war crimes will have on the reconciliation of the country". Trafficking cases are not highlighted or mentioned in the entire document—although the first acknowledgement mentions economic and organized crimes cases in general terms.

<sup>99</sup> The Consultant is aware of breaches of security, identity, and protection of victims testifying—as well as fair trial and human rights concerns. Furthermore, it is highly recommended that an assessment and comprehensive legal review of trafficking cases processed by the BiH State and other Courts auditing the application of assistance, protection, and the victim witnesses' satisfaction/ understanding of their participation in the criminal proceedings be conducted. Review the forthcoming OSCE Witness Protection Report anticipated in 2007 prior to developing a BiH Victim Witness Coordination System.

<sup>100</sup> For example: separate entrances and waiting for witnesses and defendants, protection of identities and other alternative methods (distortion of image, video conferencing, closed hearings, defendant removed from courtroom etc.) securing the testimonies of witnesses.

<sup>101</sup> The Consultant was not provided the criteria that is allegedly developed and employed by the BiH State Prosecutor's Office and SIPA WPD used to determine the level of threat/risk directed towards witnesses.

assistance, optical and dental services in relation to the injuries that they received from the crimes perpetrated against them. The WSO stressed that they have very good cooperation with the BiH State Court Judges and that protection and assistance strategies are devised on a case-by-case basis pending the creation of standardized rules of procedure governing witness protection and assistance. Regarding protection and assistance for trafficking witnesses, the Support Office could only provide very vague information (meaning they were aware of some cases but could not elaborate regarding any specific details) since the shelters that provide accommodation and assistance also coordinate the provision of protection for those witnesses.

The WSO did acknowledge that the BiH State Court lacks experience in implementing witness protection and amendments are needed especially related to the Witness Protection Hearing within the BiH Criminal Procedure Code. Allegedly, this procedure complicates the application of witness protection and risks protection of the information related to witnesses under threat. Furthermore, it was mentioned that often witnesses change their testimony in court. The Witness Protection Hearing has been implemented one or two times for organized crime cases and the Prosecutor's Office has ceased to implement this measure due to complications that have arisen as a result of the above mentioned. The BiH State Court WSO Legal Counsel has created a Witness Protection and Assistance Working Group composed of selected BiH State Court Judges and State Prosecutors. This Working Group meets about every three months to discuss rules of procedure for witness protection and assistance with the eventual goal of reaching a consensus on how protection should be applied within a standardized formal procedure.

The BiH Registry (via international sources) funds the implementation of witness protection according to the MoU concluded with SIPA and this funding is in the phase of transition towards domestic ownership. The WSO assured the Consultant that financing should continue without interruption for protection once the full transfer takes place at the end of 2007. Protection measures are complicated by ongoing conflicts between the BiH State Prosecutor's Office and the SIPA WPD related to perceived expectations and division of responsibilities between the two offices and the growing caseload and demands from the number of war crimes cases that the court has received. This situation creates tension and often miscommunication and coordination leaving both offices frustrated and unsatisfied with one another. Additionally, the SIPA WPD allegedly is trying to implement activities as requested by the BiH State Court WSO that were not envisioned when it was created. For example transport of witnesses to court from various entities, cantons, and districts as well as witnesses that are allegedly vulnerable and not in need of "special protection".

Currently, both the WSO and WPD are considering, how in the future the SIPA WPD structures and responsibilities should be implemented and whether the SIPA WPD should provide assistance to the entity, canton, and district level law enforcement structures through the SIPA regional offices. Additionally, the WSO supports the creation of Victim Witness Coordinators located in the SIPA regional offices. Funding from the international community is still needed for witness protection and assistance since allocations from national sources are not sufficient especially given the substantial needs of victims, who even currently are not able to access their rights according to the laws. Furthermore, it is highly



advisable that a financing mechanism creating resources through state level funds to provide all of the assistance and protection needs for victim witnesses be pursued to support a long term sustainable structure.

A BiH State Court Judge, who participates in the Working Group, mentioned that she is concerned that “closed hearings can be implemented as a measure of protection; however this can have an impact on the effectiveness of the presented evidence.” She also stated that there are very few cases of witnesses, who testify from different locations, in order to protect them from public scrutiny. The Working Group continues to develop “rules and tools”<sup>102</sup> to protect witnesses through all phases of the criminal procedures from pretrial (investigation and issuance of the indictment) to trial and eventual sentencing. This Judge mentioned that the BiH State Prosecutor’s Office should take additional care in those cases where witnesses are to receive protection and amend the indictments so that the identity of the witness is not revealed. She further suggested institutionalized sensitivity training be conducted with the Prosecutor’s Office raising protection of information issues. Another conflict, related to the protection of information and frequently fair trial issues, occurs when protected International Criminal Tribunal for the former Yugoslavia (hereinafter ICTY) witnesses are testifying in BiH related to ICTY protection orders in comparison to Chapter II article 5 (a) of the BiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses. The ICTY protected witnesses frequently express their wish to testify in public raising legal conflicts with the “11 Bis” referral orders. This Judge suggested amendments harmonizing the two laws since under Chapter II article 5 (a) “measures of protection shall only be implemented with the consent of the witness” and places the parties in contempt with the ICTY Court raising numerous human rights issues. An additional proposal to rectify this situation is the creation of a “Liaison Judge”<sup>103</sup> working in the ICTY coordinating with the BiH State Court on various conflicting legal issues, as well as a pilot project training for the BiH State Prosecutor’s concerning witness protection based upon the developed rules of procedures identifying best practices. This proposal may receive international community funding and be eventually implemented in the canton and district courts throughout the country in the future.

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<sup>102</sup> “Rules/Tools” guidelines/development of templates include: forms with checklists for the Prosecution (main trial and use of sensitive witnesses), preliminary hearing Judge (request for protective measures, advise provided to witnesses, under protection of ICTY, continuum—protection (from the least to most severe protection measures & the consequences of each measure relevant to the case—protection from disclosure to the public; privacy; physical safety; trauma; ridicule; dignity; attacks on person/family; exposure of information to family members; embarrassment; mental suffering; disclosure to defense/accused) and criteria (mental fragility, location of residence, physical protection in place, ICTY protection in place, ramifications for the integrity of the case), measures (need to know, protection, realistic expectations, resources available for protection (curtains, screens, box, video, video w/distortion, total exclusion, anonymity, pseudonyms) and future effects (video, streaming, audio, verdict, appeal, coordination w/ICTY) use of press releases (recaps of closed hearing & witness protection sessions—and return to the public trial).

<sup>103</sup> After the transfer of three (33) 11bis cases from the ICTY the BiH State Court has encountered difficulties with the logistical aspects of the transfers (judicial control occurring during the period between the date of transfer order is final and date of custody the suspect is delivered to BiH authorities) and communication with the BiH Preliminary Hearing/Proceedings Judge and facilitation (timely delivery of the case file to the BiH Prosecutor’s Office, uninterrupted legal representation of suspects, and harmonization of outstanding protective orders. Essentially the premise is the ICTY Liaison Judge would work with the BiH Preliminary Proceedings Judge to assure continued judicial oversight of the case (and Defendant) avoiding unnecessary delays that have a potential impact on the accused and/or witnesses’ human rights.

### **State Protection and Investigation Agency (SIPA)**

SIPA is expected to be “all State Agencies” in one structure and one of the largest obstacles facing SIPA, the WPD, and other law enforcement agencies is the willingness to “implement practicable solutions when issues or problems not envisioned within the legislation arise. Meaning, “if it’s not spelled out in the laws solutions can not be implemented”. Additionally, the introduction of a revenue collection system, such as collecting late fees from court fines, should be introduced to support the operational aspects of a Victim Witness Coordination System within a witness protection program.

SIPA staffing is currently approximately 60% and the reason for this is due to the civil service recruitment procedures that inhibit direct hiring of SIPA Officers. In fact, as a result recruitment of new Officers has been pending for over one year. The management and control from the Council of Ministers is also a tremendous obstacle actually making SIPA counterproductive. There are four (4) Directors appointed by the CoM, however the CoM de-facto retains control (reporting, accounting, and communication). The SIPA Agency Director does not have the ability to manage and direct the operations and staff leaving him in a position without authority to actually undertake his responsibilities. In fact, one of the most important units that the Director should be able to direct is the Criminal Investigation Department known as “Internal Control”; however this body directly reports to the CoM. This is a clear conflict of interest and allegedly may even be one of many contributing factors facilitating political interference, corruption, and abuse of office by political officials.

Since the SIPA WPD is not independent and does not have its own budget, the BiH State Court & State Prosecutor’s Office is coordinating witness protection issues. The BiH State Prosecutor’s and Witness Support Offices coordinate with the SIPA WPD and expressed that the WPD “has good intentions but is not functioning well”. Examples of how the WPD is not functioning include the following: in a particular case the SIPA WPD interviewed a key witness for over one hour, after the Prosecution interview, and the WPD concluded that protection could not be provided despite that the witness possessed significant amounts of information concerning a number of smuggling cases. The SIPA WPD refused to provide full, comprehensive protection because the witness has a criminal background and determined that the witness was “uncooperative”.

As a result, the witness was left to “finesse his own protection” and the WPD allegedly only provided surveillance once per day during the evening hours. Regarding the evaluation criteria that the SIPA WPD, allegedly employs, there is no formal criteria and there is a “general assumption that there is no need for a formal witness protection program” for the following reasons: the Witness Protection Program is not perceived to be effective, witnesses do not have confidence in the Witness Protection Department, and due to the fact that Bosnia and Herzegovina is a small country this prohibits relocating or hiding witnesses. The relationship and communication between the SIPA WPD and the BiH State Court & State Prosecutor’s Offices should be improved and an environment of mutual trust does not exist.

Frustration and conflicts between the BiH State Court, State Prosecutor's Offices, and WPD Offices raises tension and creates situations where potentially witnesses can be re-victimized. The WPD "re interviews" witnesses after the BiH State Prosecutor recommends participation in the witness protection program. One of the most problematic issues is SIPA is applying the law strictly in "black and white" terms and the WPD does not attempt to implement any discretionary powers. The State Prosecutor's Office complains that they are responsible for providing protection for a witness, which is not their role, as well as contacting local law enforcement to provide protection in the event that the WPD is not available. Furthermore, there is no monitoring and evaluation system in place to monitor how witness protection measures are applied and there is no responsible body holding the WPD responsible for not performing their duties.

The State Prosecutor's Office believes that SIPA is not willing to take action and is afraid in fact to act. Other concerns include how to effectively protect witness information since there is the potential that this information "passes" through many different channels within the court administration for example: the State Prosecutor, the State Prosecutor's Team, the information technology unit, translation unit, transcription office etc. The BiH State Court Witness Protection Working Group is in the process of creating rules of procedure for witness protection and addressing the technical aspects of protecting information (systemization, archiving, managing court documents, and testimonies in "real time" in court—how to retract if testimony, identity of witnesses need protection). The Working Group believes that the State Prosecutor's Office is not aware early enough in investigations that protection is or may be necessary. The Working Group is trying to educate the State Prosecutor's Office to be more sensitive towards witness protection issues and recommends to the Preliminary Hearing Judge that identifying witnesses through a number system to conceal witness information initially since it can not be known if protection may be required later during the proceedings. This Working Group is developing a series of guidelines (forms) in a checklist format for various court personnel to use as aids when applying witness protection measures. These checklists are considered as a "work in progress" and a number of considerations and ideas are currently under recommendation. The plan is to gather different opinions from the Judges in order to reach a consensus on protocols that would protect the privacy and when/if necessary the safety of the witness including their emotional well being to the extent that this is possible while at the same time not constricting the rights of the accused and public.

The Working Group advocates the promotion of sensitivity and precautionary measures from the beginning of the investigation process irrespective if protective considerations have been requested or imposed. This means that a protocol would encompass the investigation phase all the way through the issuance of the indictment, main trial, verdict, and subsequently in terms of how the trial record is archived, which includes the evidence and court files. Ultimately this means developing measures to assure redactions within the electronic records since currently the BiH State Court does not have this equipment such as that used in the ICTY. Other considerations include the interplay between the ICTY material and witnesses introduced in BiH and those that have been transferred, or previously used in ICTY proceedings. There is a conflict and real need to harmonize the protective measures so that

those imposed by the ICTY and those within the BiH laws properly balance and respect the rights of the accused—and the witnesses during public hearings. It is anticipated that additional training will be organized on these topics for the BiH State Prosecutors. This will include the preparation of materials and programs for the canton and district court Judges, who find similar protection issues arising in their courts. These trainings would be provided by the BiH State Court Judges, who developed the training materials through the development of best practices observed at the BiH State Court. It must be mentioned, however that financial resources need to be secured either through international donors or allocations provided by the BiH State.

This Witness Protection Memorandum of Understanding (MoU) signed between the WSO and WPD expired in March 2007 and currently the agreement is pending signatory between the two parties. Normally conclusion of this MoU is a routine matter, however the issues inhibiting the new agreement are due to a number of factors: such as the WPD's performance in providing protection (or more accurately not providing protection according to the WSO/State Prosecutor's Office) and their ability to "react" limiting the abilities of the BiH State Prosecutor's Office to secure witnesses participation in numerous cases starting with the investigation phase, clarification of whether the BiH State Prosecutor's Office can direct the WPD, as well as legal conflicts between the BiH Criminal Procedure Code (hereinafter CPC), the Witness Protection Program, and the WPD. The BiH State Prosecutor's Office mentioned that when they conduct their investigations they work with large numbers of people. However, these persons generally are not willing to provide information without the being assured that they will receive protection.

The BiH State Court Registrar's Office and International Criminal Investigative Training Assistance Program (hereinafter ICITAP) believes that bureaucracy and the lack of an independent budget is what is constricting and "killing" the WPD's ability to react and act on contingency plans<sup>104</sup>. The BiH State Court Registry Office requested that the SIPA WPD Head write the protection rules of procedure as a measure to improve the effectiveness of the witness protection program prior to renewing the MoU between the Offices. The failure of the WPD to act, according to the BiH State Court Registrar's Office, stems also from their lack of understanding of how to respond to crisis situations and lack of experience in preparing and planning in advance (contingency plans) for the unexpected since situations often develop when it is least expected (i.e. "always on a Friday, during the evening or on a holiday, and/or persons requiring protection whom were not thought of needing protection previously). Most crucial witnesses do not have confidence in the WPD's ability to protect them and the Department's credibility hinders the image of the agency. The BiH State Court Registry and State Prosecutor's Offices frequently mentioned that the "cultural" attitudes constrict the agency to be operative since they view the law often in "black and white" terms and are only willing to do "their portion of the job". Additionally, allegedly the WPD

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<sup>104</sup> "As an offered example: after the arrest of Marko Radic—the witness was threatened and the President of the Victims Association contacted the BiH State Court Registry Witness Protection Office (Friday afternoon) because SIPA informed the Association that the witness *should report to the local law enforcement office*, since SIPA did not have a contingency plan. *The Defendant Radic was the former Mostar Chief of Police*, thus SIPA did not provide support immediately when needed, offered ill-conceived logic in directing the witness, and only conducted an "assessment" of the situation during the following week. There was a follow up meeting with SIPA, where SIPA only offered "excuses" for their lack of action."

operative staff does not have confidence in their Managers/Supervisor's ability to lead the Department, which also has an impact on how operations are directed as well as their success.

SIPA as an organization was established just over two and one-half years ago and the organization is struggling to survive and has many needs to further support its existence. The WPD especially is fighting for additional and current use of resources and increased salaries. Promotion to a higher management position is the only way to increase an Officer's salary. This means that Officers are focused more towards getting themselves promoted meaning that attrition rates are very high impacting the agency's ability to retain trained "field/operative" personnel. Officers, due to the lack of other possibilities to increase their earnings and on going professional development, focus on leaving their entry positions for management, which is also not productive given that experience should be a contributing factor in selecting "seasoned" managers.

SIPA personnel, as mentioned previously tend to "think inside the box" i.e. following strictly in black and white terms the SIPA law and the Organization should be more proactive and more willing to implement discretionary powers. Frequent mention of the BiH political structure as a contributing factor to the current problems as well as: three (3) president's, a council of ministers, two (2) entities, one (1) district, ten (10) cantons etc. There is also the WPD's ability to operate due to jurisdiction problems in crossing administrative boundaries. Multiple police academies teaching different curriculums are an additional complication.

The SIPA Law should be amended soon, reflecting changes observed in the field, allegedly within the next 30 days—although implementation realistically would not commence until at best the end of 2007 or early 2008. The primary envisioned changes to the Law include: 1) the appointment of a Director who is independent from the CoM control and has the authority to manage the agency without interference or required pre-approvals, 2) appointment within the agency of "functional/operational" managers who would have credibility among the Officers, 3) improved conditions facilitating communication/coordination/relationships with State Prosecutor's (there is the widespread opinion that law enforcement officers are more familiar by and large with how laws should be implemented and the gathering of evidence than Prosecutor's during the investigation phase), and 4) continued operational/skills/drills training so that SIPA Officers "learn to be police" and are more comfortable within their roles and "able to act without thinking" when conducting their duties.

SIPA has an annual budget of 46 million km and the current technical means are apparently sufficient. The primary issues to remedy are the SIPA Law, management, and a separate budget for the WPD. It is envisioned that Prosecutors will be included in additional training programs to increase their understanding of investigation and collection of evidence and it was mentioned that based upon previous monitored examples of post communist/conflict situations one can expect that ten (10) years is required to change law enforcement effectiveness. The police reform process and the cultural "mentality" are contributing factors when performance issues are concerned and "political" willingness to create change is very poor especially from those persons in management positions. It seems that most stakeholders

are waiting to see how the new High Representative, working for the Office of the High Representative (hereinafter OHR) will work with the government. There is the expectation that he will be more proactive and foster an increased impetus and focus on the key reforms required for BiH.

### **The SIPA Witness Protection Department**

The WPD premises are located separately from the SIPA Agency itself and the Head of the WPD is well educated and practical. The WPD Head is currently reviewing the existing Department organization with the aim of improving the working structures. One proposal includes separating the operations wing (“Ops Wing”) and intelligence units to increase their effectiveness. The primary focus of work has been to date on the provision of protection for war crimes witnesses and there has been virtually no impact on organized crime cases-due to the lack of resources, ability to provide comprehensive protection (relocation/change of identity etc), and willingness of witnesses/informants to provide information to the BiH State Prosecutor’s Office.

As mentioned above, the BiH State Court WSO provides the financial and logistical support for the WPD. The WPD in turn transports witnesses to and from court appearances employing unmarked vehicles using plain clothes Officers. The WPD provides these services based upon general requests submitted by the BiH State Prosecutor’s Office. The WPD must locate this witness whose address may not be known and conduct a preliminary interview and comprehensive risk assessment including review of his/her financial situation. The WPD relays this information to the WSO, who may disburse small financial payments (usually one time payments). Court police, in plain clothing, could provide these services in the event that witnesses are not under considerable threat, leaving the WPD to provide protection for those cases that are under threat. Furthermore, the WPD will, in the future as their responsibilities increase, need to focus on the serious protection cases for which they have been trained and it was suggested that this be discussed and included within the new MoU with the BiH State Court WSO.

The WPD Head is advocating for the department to receive a separate line of financial support and has established good cooperation with the regional witness protection providers. The regional partners, especially Croatia and Serbia are more advanced than their BiH Colleagues in terms of technical witness protection support and these countries have received extensive training and logistical support from the U.S. Marshals Service, who run the witness protection program in the United States more formally known as “WITSEC”. In fact, the U.S. Marshals also provided Serbia and Croatia with technical equipment such as armored vehicles, high caliber ammunition and rifles, surveillance, and other support items.

It was advised that the U.S. Marshal’s Service, prior to conducting the training with the WPD carry out an “assistance mission”. This mission would assess the essential needs of the agency (for example a “contingency and reaction” training platform) and hopefully implement a series of through “hands on exercises” that would render the WPD to be more effective in the future. It is also important that comprehensive procedures are employed to vet and select the WPD Officers ensuring they have the necessary skills to not only conduct

the protection activities but also in terms of being seen as reliable, trained, and “human” meaning they have understanding and compassion for those that they are protecting<sup>105</sup>. Thus far, the WPD has not identified locations where they can place witnesses in secure “safe houses” that act effectively as a protective accommodation.

To assist in effectively performing their duties, the WPD Officers, have additional support, in the form of psychological counseling provided by a Psychological Expert<sup>106</sup>. One of the key missing components, however, for the Officers is firearm’s training. Infrequently, the European Union Military Forces (hereinafter EUFOR) offers the department firearms training exercises; however these are not conducted regularly due to a lack of ammunition, financial support, training venues, and trained staff. This hinders the Officers ability not only to provide reactive protection for their subjects but also for themselves in the event that threats are imminent. The German Government was contacted to buy “Heckler” rifles<sup>107</sup>; however approval was not granted and the issue is currently under negotiation. The creation of a state level agency that will buy ammunition and provide the appropriate supplies to law enforcement agencies is one possibility under exploration.

The WPD is composed of highly motivated, professional, dedicated, and multiethnic personnel, who do not have any constraints concerning ethnic background, gender, or type of witness in terms of providing protection. The average age of the Team Leaders, ranges from early thirties (30’s) to forties (40’s) and the average age for the incoming Officers is twenties (20’s). The Department conducts their activities to the best of their abilities given the resources and staffing levels available. Initially, the Canadian Witness Protection Program providers trained the WPD and there have been many training initiatives proposed from both ICITAP & European Union Police Mission (hereinafter EUPM) to provide expert training and courses. First hand training and courses on witness protection theory and counter surveillance driving courses; secondly, through securing two (2) Experts from the United Kingdom who possess extensive protection experience; and thirdly to educate local law enforcement in gathering intelligence “at the crime scene” for additional support and assistance working in coordination with the WPD to further support team building, communication, and cooperation between local law enforcement and the WPD/SIPA officers. However EUPM has not been able to secure funding for these ventures. It was mentioned that evaluation of previous trainings should be conducted to determine their sustainability and potential follow up needs, as well as establishment of a monitoring and evaluation

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<sup>105</sup> Assessing whether assistance and protection measure actually had an impact and were seen as effective by the witnesses themselves (did protection actually protect the witness from threats, danger, etc.).

<sup>106</sup> The Psychologist provides assistance and assesses for victims primarily, however can offer counseling also for SIPA personnel.

<sup>107</sup> [http://en.wikipedia.org/wiki/Heckler & Koch](http://en.wikipedia.org/wiki/Heckler_%26_Koch): The company is located in [Oberndorf](#) in the [state](#) of [Baden-Württemberg](#), but also has a subsidiary in the [United States](#). The company slogan is: "In a world of compromise, some don't". The slogan emphasizes that HK aims to incorporate accuracy, reliability, and ergonomics into their designs without sacrificing one over the other. Because of this paradigm many fans feel that HK is the world's premiere firearm manufacturer. This idea is supported by the fact that Heckler & Koch provides firearms for many of the world's elite military and paramilitary units, like the [Special Air Service](#), [U.S. Navy SEALs](#), [FBI HRT](#), the German [KSK](#) and [GSG 9](#) and countless other counter terrorist and hostage rescue teams.

system (including “sanctions” when Officers fail to act/react or in the event that justice is obstructed by other governmental institutions/civil servants, political parties/persons, individuals etc).

The Head of the WPD visited all four (4) of the SIPA regional offices located in Banja Luka, Sarajevo, Tuzla, and Mostar promoting the WPD and as well attempting to reduce the attrition rates within the Department/Agency whereby the Officers leave or are placed by the Government in other positions, which contributes to the on going fragmentation of the Department. Furthermore, the WPD organized numerous seminars for the canton, district, and lower courts in terms of providing advice on protection measures. There has been a minimal donation secured for a “central prison”, however this amount is insufficient and additional advocacy efforts should be undertaken to secure the funding to create and maintain a strong penal institution that will have the ability to house the current and future dangerous criminals.

The BiH State Court, as mentioned previously provides financial support for the WPD and the Court selects the cases that require protection and the WPD transports those witnesses to the court for them to provide testimony. However, the Head of the WPD anticipates that this arrangement will change by the end of the year when the obligations and responsibilities for the department are amended with implementation of the amendments (and by-laws) to the SIPA Law. The majority of cases that the State Court requests protection for (90%) relate to war crimes and a very small number (10%) for organized crimes due to the fact that the war crimes caseload is substantial and despite that the State Court WSO would like the WPD to implement all of their requests, the WPD does not have the capacity to do so. The Head mentioned an estimated 150 to 200 potential witnesses and that the WPD could only realistically cover up to five (5) with substantial protection currently.

Witnesses requiring protection for cases located in the Canton and District courts are transferred to the State Court level due to the lack of legal and logistical frameworks in place. The WPD, as a gesture of good cooperation, in the event that they have the capacity to do so, provides protection services for canton/district courts on an ad hoc basis. Specifically in reference to trafficking, the WPD has not provided protection for a large number of cases—approximately 10 to 15 maximum. They employ the same methodology that is used for other protection cases. The Head mentioned that the Department is “waiting” for the “real” witness program to start and reiterated the need for substantial technical assistance and financial support. In fact, this is one of the reasons the department is working on improving the regional relationships with other witness protection departments.

The Head contacted the trafficking shelter providers to offer support from the WPD, to improve communication and cooperation, and as an additional link for the shelters towards other governmental institutions. The Head stated that the shelters can “not regulate” the work of the police structures and that they should work together with potential victims (especially those who will be witnesses) to provide assistance, support, and in gathering intelligence information.



The Head mentioned that the SIPA Agency is “fighting” to survive and that substantial work needs to be conducted to improve the relationships between the local law enforcement structures, SIPA, and the WPD. Solid communication and cooperation in gathering intelligence could only benefit both in terms of fighting crime, building credibility and confidence among the public, but also in developing protection and assistance mechanisms for victims and potential witnesses.

The Head of the WPD has a professional background in public relations within law enforcement and agreed to consider the development a public awareness campaign and community outreach program as well as the creation of a Victim Witness Coordination System with Advisors located in each of the four SIPA regional offices. Those Victim Witness Advisor’s and the WPD Officers would require, however training, capacity building, technical support, perhaps an onsite Psychologist, not to mention an increased number of female Officers to interview and work with trafficked victims. Another suggestion, not yet implemented, is to provide a Witness Protection Advisor to the WPD and for law enforcement and SIPA Officers to distribute “business cards” to victims with the contact information for all local/regional assistance providers (shelters, domestic violence assistance, hotline numbers, social welfare centers, health centers etc). This would provide information to victims (suspected trafficked victims and/or all victims of crime) with information to contact SIPA, law enforcement, and assistance providers either themselves or with assistance from SIPA, law enforcement, and eventually the Victim Witness Coordination System personnel.

### **Relocation/Reintegration/Resettlement**

Comprehensive witness protection programs are very expensive if assistance and protection are allocated as it should be envisioned, meaning the provision of housing, education, living expenses, employment, health and psychological benefits etc. Developing a sound Victim Witness Coordination & Protection System is very important since many more serious crimes that need to be prosecuted in BiH are on the agenda and it is difficult currently to ascertain which/what types of crimes will appear in the future once confidence and credibility develops in the country and towards the judicial system. Future plans include working on “contingency planning” and establishing witness protection offices in each of the SIPA regional offices that are located in four (4) locations (Tuzla, Sarajevo, Banja Luka, and Mostar). Additionally, as a component of such a protection project, the WPD Head supports the creation of Victim Witness Coordinators to work with victims and included within the activities is a public awareness campaign, materials informing victims/witnesses of their rights, and capacity building trainings to mention just a few of the components.

There are laws and procedures ensuring that witness protection in the courtroom works, although there are continuous breaches inside and outside of the courtroom highlighting that the witness protection program is not functioning properly. Furthermore, there are measures that can be implemented that are low or do not cost anything such as routine patrols and gathering intelligence, which could contribute to a more functional system, however this is where the mentality of the law enforcement needs to change—to think in different ways and

react logically to situations. Authority and the ability to “task” local law enforcement is not an option currently and when protection is successful it is usually based upon an atmosphere of “good will”, which is not sustainable especially if relationships falter or are weak. A significant factor to consider when developing a witness protection program internally in BiH is the development of an extensive network of trained, operational “Police Officer Corps”, like those providing protective services in the U.S. by the “U.S. Marshals Service” or in Italy (Carabinieri--Italian Military Police). These Officers would receive extensive training and could be contacted immediately throughout the country to provide protection for witnesses when it is necessary.

The largest factor constricting the ability of the WPD to provide effective protection is allegedly delays associated with “waiting” for the Prosecutor to direct them and if the Prosecutor is unavailable the WPD will not react. Several stakeholders repeated that the WPD should take the initiative towards gathering intelligence and directing investigations. The WPD Officers are afraid of losing their positions and not willing to take risks where there are no guarantees. Salaries equated with the risks involved are low and should be harmonized between local law enforcement when performing their duties. Administrative and jurisdictional constraints exist when speaking about providing protection at the entity levels and communication is complicated by professional jealousy and other problems involving local law enforcement officers not willing to share intelligence with the SIPA personnel. Still adding to this equation is the alleged presence of criminals within the police forces as well as allegations of imbedded corruption.

Many potential host countries constrict the relocation of potential BiH witnesses under significant threat. These countries are reluctant to accept persons, who were engaged in organized and war crimes, lack employment skills, or who do not speak the “host” country language—not to mention that supporting a witness and/or their family completely is extremely costly. Frequently it was noted that destination countries are not cooperative and relocation of BiH witnesses in the immediate region or within BiH itself can be hampered by the post conflict, political, and ethnic complications. The WPD Head stated that this is a special consideration for BiH domestic victims of trafficking and Roma victims were particularly highlighted (based upon previous and current cases).

Thus far, BiH has had only two (2) trafficking cases and three (3) organized crime cases that required relocation outside of BiH. BiH has signed agreements with other countries in the region (Croatia, Macedonia, Serbia, and Montenegro), however many countries are unwilling to relocate permanently persons and most are abroad only for short periods of time. According to the stakeholders interviewed relocation for BiH witnesses is not possible within the country and it is questionable in the immediate region. Regarding particular cases even most European countries may not be an option and when considering the United States and/or Australia obtaining visas and permanent relocation is very difficult.

Witnesses requiring protection should have access to a full range of benefits including: relocation (if deemed necessary), financial assistance, employment, education, medical and psychological care, change of identity and personal documentation, reduced sentences (plea bargains or freedom, etc for providing information) and others for themselves and their

families irrespective of whether they participate in criminal proceedings, are relocated abroad, or remain in BiH. Witnesses, who are not criminals, should be able to receive increased benefits especially if they are crime victims such as financial compensation and additional assistance towards rebuilding their lives. Initial placement within a witness protection program could be temporary, depending upon the circumstances, and after witnesses are safely placed or “hidden” the initial decision can be reviewed as part of the continuous risk assessment that should be conducted to determine if protection is still required and in terms of the investigation status. Furthermore, protection and assistance should be separated from the investigation procedure.

BiH does not currently have a program of this nature in place although the above rights are enshrined in numerous international conventions and treaties that BiH is a signatory and is obliged to uphold and implement. The BiH Constitution also provides for comprehensive human rights protection and the BiH Witness Protection Laws appear sufficient.

The primary recommendations include: establishing an outreach program for the entity, canton, and district courts whereby the BiH State Court Witness Support Office would train those courts in the application of witness protection based upon the best practices and rules of procedure (pending) developed for witnesses under protection as observed at the BiH State Court; identification/clarification of national stakeholders (social bodies, public/non public agencies) in the Witness Protection Program and Law on Witnesses under Threat and Vulnerable Witnesses so that ownership and responsibility takes place and it is clear who is to provide assistance and how. The development of a Victim Witness Coordination System, sensitivity training for all stakeholders (especially Prosecutors and law enforcement) dealing with victims and/or witnesses, increased recruitment of female SIPA and Police Officers, and team building exercises improving the relationships between SIPA-law enforcement-Prosecutor’s Offices. Additional recommendations will be included in the section developing a Victim Witness Coordination System.

### **VIII. U.S. Trafficking Professionals**

The purpose of establishing victim witness coordinator positions within U.S. Government service provider departments was to secure advocacy efforts to increase successful delivery of assistance and protection in safeguarding victims against intimidation, retaliation, and secondary victimization. Trafficked victims acting as witnesses are a distinct group of persons subject to unusual risks requiring special protective measures. The readiness of victims to act as a witness can be a crucial condition facilitating prosecution and countries that have comprehensive victim assistance programs are more successful in terms of prosecuting traffickers. Protection and support for the victim also enhances effective law enforcement and protection of the victim’s human rights. In fact, the special rights and status accorded to victims of trafficking under the Trafficking Victims Protection Act of 2000 preserves their access to assistance and protection whether they act as witnesses. The three primary goals enshrined in the TVPA are: prevent human trafficking internally and overseas,

protect victims and assist them in rebuilding their lives with U.S. and state support, and prosecute traffickers under stringent Federal penalties.<sup>108</sup>

The implementation and development of measures supporting victims require constant coordination and cooperation among service providers, the criminal justice and immigration systems, public services, and international organizations at the national and even when necessary at the local levels. The level of understanding and clear delineation of roles among the different actors needs to be concise and special coordination programs are required in the destination, transit, and source countries, which lend themselves towards enabling the victim to live safely, move towards recovery, and offers services and programs empowering the victim for the future to reduce the chances of further victimization and the possibilities to be trafficked again.

Exchanges of experience, best practices, and advice was provided by a Senior Advisor working with the U.S. Department of State Office to Monitor and Combat Trafficking in Persons, a Program Analyst for the Trafficking in Persons who works under the U.S. Department of Health and Human Services Office of Refugee Resettlement within the Administration for Children and Families, and from a Victim Witness Coordinator working for the U.S. Department of Justice. These experienced professionals discussed their programs and offered suggestions to consider when developing a similar system in Bosnia and Herzegovina.

### **U.S. Department of State Office to Monitor and Combat Trafficking in Persons**

The Office to Monitor and Combat Trafficking in Persons is a relatively new office and despite the enactment of the TVPA and other assistance and protection measure the actors involved with fighting the phenomenon of trafficking continue to seek additional ways to improve their services, the identification of victims, and the application of protection. Service providers or grantees receiving federal funds, according to the Senior Advisor (hereinafter Advisor), keep the statistical data on trafficked victims and disparities in coordination and accuracy of information continue. Despite the wide existence and variety of education materials available through every provider and the U.S. Federal Departments dealing with trafficking— law enforcement still needs capacity building and training. The Advisor offered several points of contact to speak with, which have extensive experience and best practice examples when dealing with trafficked victims. A very informative resource is the International Association of Chiefs of Police, who offer on line a wide variety of useful references written by experienced Directors of Police (funding received by the U.S.

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<sup>108</sup> [www.rescueandrestore.org](http://www.rescueandrestore.org) or [www.acf.hhs.gov/trafficking](http://www.acf.hhs.gov/trafficking) : The Trafficking Victims Protection Reauthorization Act of 2003 provides resources and legal tools that can be utilized by trafficked victims empowering them in bringing Federal Civil suits against traffickers for actual and punitive damages and encourages state and local law enforcement agencies to detect and investigation human trafficking cases. On April 04, 2007 the U.S. Department of Justice issued a press release noting a 64 count indictment issued against one of ten Defendants in a trafficking case, who if convicted will face life in prison and fines up to \$1.5 million for three (3) counts of sex trafficking of minors and two (2) counts of adult women sex trafficking. This particular case is involves the FBI (investigation of the case), the Internal Revenue Service, and two local law enforcement departments and will be prosecuted by the U.S. Attorney General's Office at the Federal level.

Department of Justice) such as: “The Crime of Human Trafficking—A Law Enforcement Guide to Identification and Investigation (available in pamphlet and video form and used to train law enforcement professionals); “Big Ideas for Smaller Police Departments—Recruitment and Retention of Qualified Police Personnel”; “What do Victims Want—Effective Strategies to Achieve Justice for Victims of Crime”; and the Ethics Toolkit—Enhancing Law Enforcement Ethics in a Community Policing Environment” just to mention a few that could be used by the Bosnia and Herzegovina law enforcement community as educational resources.<sup>109</sup> Additional professionals include a Prosecutor and female Police Officer, both with long experience investigating and prosecuting traffickers and the cross cutting issue of domestic violence located in Brooklyn (one of the locations in the U.S. experiencing increased amounts of trafficking) and the well known and best practice nongovernmental organization located in San Diego, California— “The Family Justice Center”.

**U.S Department of Health and Human Services**  
**Office of Refugee Resettlement Administration for Children & Family Services:**  
**“Rescue and Restore Program”**

The Program Analyst (hereinafter Analyst) for the Office of Refugee Resettlement provided information describing the U.S Department of Health and Human Services—Administration for Children and Family Services Division “Rescue and Restore: Victims of Human Trafficking” project. The Health and Human Services Department (hereinafter HHS) Intermediaries Contract provides federal contract funds to organizations located throughout the U.S. that have “proven track records in fighting human trafficking”. The contractors serve as intermediaries responsible for maintaining coalitions with anti trafficking organizations in those geographic areas, leading activities connected with education and outreach efforts through the region and assessments, concerning the scope of the trafficking, raising awareness, and assistance in identifying and rescuing trafficked victims. The HHS is the U.S Federal agency responsible to assist human trafficking victims in assessing if the victims are eligible to receive benefits and services so they are able to rebuild their lives safely.

The HHS Street Outreach grants provide federal grant funds to U.S. Organizations engaged in direct and indirect outreach among trafficking vulnerable populations, including migrant laborers, persons involved in prostitution, and the communities in which these vulnerable populations reside. The Rescue and Restore public awareness campaign was initiated in

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<sup>109</sup> [www.theiacp.org](http://www.theiacp.org) on line reference guides include: “Big Ideas for smaller police departments: recruitment and retention of qualified police personnel-A best practices guide; Transitioning Women and Minorities into Policing; Community Survey Success; Best Practice Guide-Smaller Police Department Technical Assistance Program: Maneuvering in the Political Environment; What Do Victims Want-Effective Strategies to Achieve Justice for Victims of Crime; Responding to Hate Crimes: A Police Officer’s Guide to Investigation and Prevention; Ethics Toolkit: Enhancing Law Enforcement Ethics in a Community Policing Environment; DNA Evidence: Enhancing Law Enforcement’s Impact from Crime Scene to Courtroom and Beyond; and The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation (pamphlet & video).

2004 to increase public awareness regarding human trafficking and to rescue and assist victims of trafficking. The public awareness campaign provides posters, brochures, fact sheets, and other educational materials to the public free of charge, via an online request form available on the HHS website.<sup>110</sup> The public awareness campaign also created a network of regional Rescue and Restore coalitions. These coalitions are comprised of stakeholders, who are the most likely to have contact with victims, such as law enforcement personnel, health care providers, faith based communities, and nongovernmental organizations. A key aspect of the HHS Anti Trafficking in Persons Program is the National Human Trafficking Resource Center, which provides a toll free 24 hour 7 day a week human trafficking hotline. The hotline is available throughout the country and works to connect victims with assistance providers.

The HHS Department issues letters certifying victims as a victim of severe forms of trafficking according to the definition within the TVPA so the victims can access benefits. One of the most important benefits of interest to the victims is ability to obtain a work permit. On 22 May 2006 the Department certified the 1,000<sup>th</sup> victim of trafficking since the enactment of the TVPA in 2000. The Department produces fact sheets on: human trafficking, certification for victims of trafficking (eligibility for benefits through the “T” and Continued Presence visas and immigration procedures) the TVPA (goals, prevention, protection, and prosecution) and concerning victim assistance. The victim assistance program covers housing, shelter, food, income, employment, (English) language skills training, healthcare and psychological benefits, and assistance for victims of torture. The victim assistance fact sheet explains the immigration status procedures and specific benefit programs that victims can apply to along with the department website address and hotline telephone number. Additional resource materials include reference cards including “key” questions to ask to assist and help a potential victim of trafficking (includes the hotline number) media materials such as posters and brochures for public information campaigns; information on the website includes: coalition information; program toolkits for law enforcement, healthcare, and social services personnel; resource materials in Russian, Spanish, Thai, Indonesian, and Czech languages; the hotline number; the link to the national human trafficking resource center and other trafficking links and other resources designed to educate and assist the public, service providers, and potentially those coming in contact with the victims.

The Analyst mentioned that trafficked victims are usually contacted first by law enforcement personnel and through referrals to nongovernmental organizations. Victims of trafficking, who receive immigration relief but have not yet connected with an NGO are assigned a Case Manager through the HHS Per Capita Case Management Contract with the United States Catholic Council of Bishops—an extensive network faith based nongovernmental organization identifying service providers the same day the case manager is assigned. The Case Managers conduct the in depth assessments and then advocate on behalf of the victim in terms of securing employment authorization, education, health, psychological, and other benefits such as the “match grant” resettlement program. The Analyst mentioned that during the next week a new report would be requested by a Congress regarding a comparative analysis of domestic and international victims of trafficking benefits. Allegedly, Domestic

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<sup>110</sup> [www.rescueandrestore.org](http://www.rescueandrestore.org)

victims of trafficking are not counted within the gathered statistical information and fact sheets for these victims do not exist—nor are they assigned to case managers. However, domestic victims of trafficking are eligible to apply for any and all benefits available to U.S. citizens, including Temporary Assistance to Needy Families (TANF), food stamps, housing assistance, and other benefits, many of which are comparable to the refugee benefits and services for which certified international human trafficking victims may apply. On a positive note, service providers do not differentiate between international and domestic trafficking victims and they continue to provide protection and assistance to both. The hotline offers a multi-lingual service provided by AT&T (American Telephone and Telegraph) where victims of trafficking may speak to a person in his/her language and assistance for all forms of trafficking is available. In conclusion, the Analyst reiterated that most victims of trafficking currently are recruited when they are adolescents (average age is 12 years) and key components contributing to the success of a victim witness coordination system is the participation among civil society—faith based communities—service providers (local, federal all departments) working together to combat trafficking.

### **U.S. Department of Justice—Victim Witness Coordinator**

The U.S. Department of Justice Victim Witness Coordinator (hereinafter Coordinator) has traveled throughout the world assessing witness coordination systems and during the discussion she was able to provide suggestions that may be useful in developing a Bosnia and Herzegovina victim witness coordination system. Law enforcement personnel conduct risk assessments for victims of trafficking (and crime) and the Prosecutor's offices focus primarily on witness preparation and the trial. In the event that the Prosecutor's Office learns of threats or dangers to a witness then he/she informs the responsible law enforcement personnel. The Coordinator highlighted a best practice in terms of operating standards when conducting safety/risk assessments such as those developed by Safe Horizon— "Safety Planning Standards for Trafficked and Enslaved Persons: A Guide for Service Providers and Attorneys".<sup>111</sup> The primary role of the Victim Witness Coordinator is to advocate on behalf of the victim with assistance providers.

Victims usually remain in the U.S., however those that do come to the U.S. are usually family members or close associates, who testify before a U.S. Federal Grand Jury or in the trial. Victims and/ or family members/close associates located in other countries are provided protection assistance by the "Legal Attaché Offices" (LEGATs), which is a program operated by the FBI within U.S. Embassies. These are additional legal and law enforcement resources allowing the U.S. to maximize all the tools available to ensure security as well as increased success for case prosecution "integrating" law enforcement efforts around the world. U.S. Agents work together with their local counterparts on cases of mutual interest to solve and prevent crimes.<sup>112</sup>

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<sup>111</sup> These Guidelines are not available through electronic sources as the content is considered sensitive. The manual was funded by the Office for Victims of Crime—Office of Justice Programs in the U.S. Department of Justice. The Consultant has a copy of the Guidelines.

<sup>112</sup> [www.fbi.gov](http://www.fbi.gov): Legal Attache Offices within the FBI have an international presence in 50 offices in U.S. Embassies and consulates around the world and their mandates are: stop foreign crime far from American

Victim witnesses appearing in the U.S. to testify from abroad when the U.S. Federal Grand Jury conducts trials connected with trafficking in human beings use a “Federal Expense Witness” account under the management of the U.S. Marshals Service that pays for the witnesses travel, transportation, and accommodation costs during their stay in the U.S. A memo is issued to the U.S. Embassy or the Immigration, Customs, and Enforcement Department (ICE), who produces the travel and visa documents. The U.S. Marshals Service greets witnesses upon their arrival transporting them to a designated accommodation and provides for the incidental and witness payment expenses. If the witness is indigent then advance payments may be issued. Nongovernmental organizations, the Federal Bureau of Investigation (FBI), and the Immigration and Customs Enforcement Department (ICE) are able to provide Translation services for the witness and these Translators are screened and must be certified according to “court standards” for Translators. This certification of Translators was implemented as a measure to ensure that witness testimonies or statements would be accurate and objective (not biased).

The majority of international trafficked victims remain in the U.S. and usually their families join them, since they are threatened in their country of origin. The Coordinator stated that it is quite rare that trafficked victims receive the U.S. Marshals style of witness protection (“witness protection program”) and in fact most are not willing to accept these measures due to separation from their families. There are many forms of witness protection and there is a type of “emergency witness assistance” implemented for short periods of time involving changing the victim’s name, identity and identity documents, placement in a high security type of nongovernmental organization, provided a “cover story”, and given a pre-programmed cellular phone to activate 911<sup>113</sup> if a threat is imminent—protection is then provided by a local emergency law enforcement response unit.

The TVPA added another layer of rights and protections for trafficked victims on top of a 25 year history of victims-rights laws and the “VOCA” or the victims of crime act fund established at the federal level and fines adjudicated from those cases are placed in this fund with the U.S. Congress controlling the cap of the fund, which is usually several hundred million dollars. VOCA financial resources are not collected as “taxation based revenue” but through court and penal institutional fines/salaries. Defendants serving time in correctional facilities are able to pay their fines through the “Inmate Financial Responsibility Program”<sup>114</sup>

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territory and solve international crimes as quickly as possible; coordinate international investigations with their local counterparts and cover international leads for domestic investigations; and coordinate FBI training classes for police in the LEGAT geographic areas (counterterrorism, cybercrime, forensic techniques, human rights, and trafficking). The FBI LEGAT program is managed by the Office of International Relations and directed by a Special Agent in Charge at the FBI HQ in Washington, D.C. Coordination between other federal agencies, Interpol, foreign police, national and international law enforcement associations, and security offices in Washington is an integral activity.

<sup>113</sup> The „911“ telephone number is the universal U.S. Emergency response hotline implemented nationwide directing calls to local police departments that employ trained operators 24 hours a day. The calls are recorded and when calls come in other services providers are obliged to respond as well—ambulance, fire, and law enforcement officials. In the event that other service providers are necessary they are contacted by law enforcement teams responding at the scene.

<sup>114</sup> The Inmate Financial Responsibility Program was created to encourage each sentenced inmate to meet his/her financial obligations imposed under 18 U.S. C. Law in section 3013 (court-ordered restitution; fines and



managed by the Bureau of Prisons, which allows inmates to pay fines and/or restitution. Fines are directed into the State Crime Victim Compensation Fund<sup>115</sup> and Courts distribute restitution payments, which are directed to the U.S. Attorney's Offices.

When considering corruption and the ability of law enforcement personnel to investigate and gather evidence in small communities the Coordinator thought it was best to advise the Officer to identify one person—build the relationship with that person and gradually expand “your network” i.e. start small in strengthening cooperation. The coordinator also mentioned the International Association of Chiefs of Police resource center on their website and to contact the Federal Bureau of Investigation (FBI) and Federal based law enforcement agencies to determine with them how they train smaller local law enforcement personnel and “how to maximize resources to provide protection and conduct investigations”. The Coordinator also highlighted a resource manual listed on the U.S. Attorney's Office website and materials used by ICITAP and the Office of the Prosecutorial Development Assistance and Training (OPDAT) program international divisions to train Judges and Prosecutors.

Coordination and communication as well as relationship building continues to be one of the ongoing challenges and stakeholder commitment is essential to implementing successful programs and providing protection/assistance. Advance preparation, conference calls, and protection of information are essential when planning raids and a list of provisions was created to ensure all of the conditions were in place preparing the situation such as: logistics, legal aid, interview procedures, roles, translation services, assistance and selection of victim witness coordinators etc to ensure successful collection of evidence for the trafficking case as well as protection/assistance for the victims. Raid preparation usually involves Prosecutors from the U.S. Attorney's General's Office from the Civil Rights Division, ICE, the FBI, NGO's, as well as other relevant service providers depending on the circumstances. The Coordinator mentioned that over one-quarter of the investigations are prepared upon the basis of information received from service providers.

### **Brooklyn Family Justice Center**

A District Attorney working in the Brooklyn Family Justice Center provided information on how the Center was formed as well as how trafficking cases were processed in the past and currently. During the past two years the Brooklyn Family Justice Center advocated, along with other service providers and law enforcement officials, for the enactment of a (New York) state trafficking law, which will enter into force in November 2007. Prior to the enactment of this law very few trafficking cases were processed and the majority of the indictments were for the promotion of prostitution. The reasons for this stemmed from the

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court costs; and state, local or federal court obligations). The Prison staff shall assist the inmate in developing a financial plan and reviewing whether satisfactory progress is made (subtracting payments from work performed either in the institution or outside). The effects of non participation are recorded by the staff and reported to the Parole Commission with particular consequences (not receiving furlough, performance pay above the maintenance level-bonus-vacation pay, assignment to work detail outside of the secure perimeters of the institution etc.

<sup>115</sup> These funds cover the costs of funerals, psychological, social, and other forms of assistance.

fact that there was no state trafficking law and despite the federal level legislation the approach towards cases were of an ad hoc nature, and events connected to the post “11 September” situation meaning that the U.S. Department of Justice attorney’s were primarily focused on extensive criminal enterprises formed by sophisticated organized crime networks and thus financial resources were directed as a priority towards efforts to fight anti terrorist activities.

Thus, the Brooklyn Family Justice Center found itself in an increasingly difficult situation without support and unable to pursue individual cases that fell out of the interest and scope with the Federal Criminal Justice System priorities and felt that the needs of trafficked victims and the needs of the community were no longer in tune with the reality in the field. In an effort to more effectively combat against the trafficking of human beings—given that Brooklyn increasingly found itself at the center of an ever increasing influx of trafficking cases—the Brooklyn District Attorney’s Office applied for federal funding to establish as a first step, a “Family Justice Center” and then as the second step a state level trafficking law.

The Brooklyn Family Justice Center was one of fifteen such centers located across the U.S. to receive federal funds under the premise that the creation of “Sanctuaries for Families” be created providing shelter and public assistance for domestic-sexual-gender violence victims. Additionally, these types of centers implemented the novel concept of co-locating Prosecutor’s (or District Attorney’s) service providers (counseling service centers), and law enforcement personnel in order to improve their coordination and communication leading to an increased number of prosecuted cases and more effective engagement of victims as victim witnesses—not to mention increasing the consistent delivery of assistance and protection for those victims.

The Family Justice Center receives trafficking cases in two ways usually. The first is through reports directly to the center, which is extremely rare. The second is through the gathering of evidence leading to investigatory raids (and as a result also interviews or questioning with victims brought in from the raids). The most common method of trafficking to Brooklyn is through “Coyotes” or persons, who escort primarily females (the majority of which are juveniles) for the purpose of sexual exploitation.

The Family Justice Center frequently contacts faith based organizations, who have a proven track record of quickly identifying secure and safe sanctuaries and accommodation (often “underground safe houses”) for trafficked and domestic violence victims. Furthermore, the center has found that immediate engagement and protection for trafficked victims is crucial i.e. responding quickly and in the words of the District Attorney “a delay of five minutes and we can lose them”. The faith based organizations understand the need to provide secure protection and trafficking as well as domestic violence cases are relocated within the city or to another state if necessary, which underscores the importance of communication, coordination, and security of information among those agencies involved in the process. Safety planning and risk assessments are based upon those implemented for domestic violence cases and the District Attorney stated that the processing of trafficking cases is at the same level as “domestic violence cases 10 to 12 years ago”.

The Family Justice Center has also implemented a street outreach program and an innovative project called “Project Respect” in an effort to gather intelligence and evidence on trafficking cases as well as gain the trust of potential trafficked victims. The project “works backward” through the identification process in the sense that those arrested for prostitution as part of their court sentence must participate in the project. The project itself is designed as a diversion program that involves group and individual counseling, job training, employment placement, housing assistance, and information on the network of service providers involved in providing various forms of assistance and/or participating in the Sanctuary for Families program. The project has been extremely successful in gaining the confidence of trafficked victims, gathering direct and indirect evidence on trafficking, and in terms of learning how trafficking operations function and the differences between cultures and how they manage and create their trafficking networks.

The Family Justice Center personnel, especially the law enforcement side has learned and continues to learn about trafficking especially concerning how different cultures operate their business and the methods they employ<sup>116</sup>. Project Respect also has proven to be an effective underground operation as the victims, who develop relationships with its personnel offer intelligence to assist the center in their investigations. The District Attorney stressed several times the importance of the role that law enforcement plays and the perception the community has as well as the victims towards police. Community policing programs are critical and confidence is crucial since Police Officers are more than likely to be the first point of contact with the victims. The Family Justice Center has implemented a public awareness raising campaign during their street outreach work promoting “police as your friend and not criminals”. Finally, the District Attorney noted that it is an on-going effort and important to educate the public in terms of the social/cultural debates associated with prostitution and trafficking: “victim vs. criminal vs. sex worker” and “voluntarily victimized vs. involuntarily” etc. which also has been observed in most other countries.

## **IX. A Regional Best Practice Example—Romania**

### **Establishment of The Romanian Victim Witness Coordination Program**<sup>117</sup>

The U.S. Bucharest Embassy Department of Justice Office, as part of their continuing advocacy efforts to work with the Romanian Government on trafficking in persons issues assisted in the development of “best practices” with the creation of a victim witness coordination program in November 2006. Additionally, in December 2006 another positive practice became operational—the Trafficking in Persons Database allowing for improved

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<sup>116</sup> For example The Brooklyn Family Justice Center learned that Russian mafia usually uses trafficked victims as Dancers, whereas the Asian mafia places their trafficked victims in massage parlors.

<sup>117</sup> Numerous documents received from the National Agency Against Trafficking in Persons and the U.S. Embassy located in Bucharest, Romania Department of Justice, RLA as well as additional email correspondence on 22 May 07 with the National Agency against Trafficking in Persons (ANAT) .

identification of trafficked victims and faster responses to their needs<sup>118</sup>. Preceding this development was an assessment conducted by U.S. Victim Specialists<sup>119</sup> in February 2004 followed by a study tour of state and federal victim witness programs in the U.S. attended by a team of Romanian justice personnel composed of Prosecutor's, Judges, law enforcement, and the Ministry of Justice. The Embassy reinforced the concept through numerous programs<sup>120</sup> allowing for discussions to evolve connected with victim witness issues and the trafficking phenomenon. The Romanian National Anti-Trafficking Agency (hereinafter ANAT)<sup>121</sup>, as part of their anti trafficking strategy during the summer of 2006, issued a decision<sup>122</sup> in September 2006 adopting the initiative as one of its priorities and is currently implementing the program nationwide. The rationale behind establishing the program is to ensure the cooperation of victims as witnesses during the judicial process leading to an increased number of successful prosecutions as well as improved delivery of assistance, protection, and understanding of the criminal justice system for the victims.

Previously, the Romanian legal system did little to facilitate the testimony of witnesses, which meant cases were frequently dropped due to lack of evidence or testimonies.<sup>123</sup> The ANAT was established in 2005 and noted at that time that it was willing to work on improving the coordination between victims and witnesses and the legal system in an effort to ensure that witnesses would testify in court.<sup>124</sup>

A number of complicating factors lead to the creation of the victim witness coordination system such as a the low number of successful prosecutions although law enforcement improved their techniques to investigate trafficking crimes, the length of time needed for verdicts to be issued in cases (including exhaustion of appellate remedies), the gathering of

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<sup>118</sup> During the final quarter of 2006 ANAT created a Program of National Interest for Victim Assistance providing government funds to NGO's to ensure improved quality of services for victims (more than \$300,000.00 estimated by June 2007) as well as drafting quality standards for assistance.

<sup>119</sup> In November 2006 the U.S. Embassy sponsored the first series of victim/witness coordination programs featuring Heather Cartwright the Director of the U.S. Washington D.C. Attorney General's Office Victim Witness Coordination Unit—who participated as a member of the initial assessment Team in 2004.

<sup>120</sup> Judicial symposiums, specialized workshops focused on pre-trial services, supervised release, and victim impact statements

<sup>121</sup> The Romanian Government issued a decision in December 2005 creating ANAT as a „coordinating agency“ placed under the Ministry of Interior responsibility. Responsibilities include: coordinating the fight against trafficking in persons; coordinating the collection of trafficking data and the phenomenon itself; and monitoring the resources available for trafficked victims. The President, Dan Ilicsandru, was appointed in March 2006 and the agency became operational in May 2006. Mr. Ilicsandru served previously as the Chief of International Coordination for the National Anti-Drug Agency and visited the U.S. as a guest of the Department's International Visitor's Program. ANAT oversaw the creation of a new national anti-trafficking in persons strategy which created the impetus of discussions related to the benefits of improving victim/witness coordination.

<sup>122</sup> ANAT in cooperation with the General State Prosecutor's Office, the General Directorate for Countering Organized Crime, the Ministry of Justice, and the U.S. Embassy located in Bucharest.

<sup>123</sup> The Senior Romanian Prosecutor responsible for investigating organized crime cases reported that Prosecutors lost contact with 40% of all THB victims after the first interview. The Romanian law enforcement institutions continuously improved their ability to investigate trafficking offenses but this was not reflected in the statistics of successful prosecution of traffickers.

<sup>124</sup> The Embassy also worked with other branches of the Romanian Government and nongovernmental organizations and held the first training seminar in November 2006 with three (3) follow up seminars scheduled in 2007.

imprecise statistics on the number of cases where Prosecutors determined that either the victim was unavailable or not reliable to proceed with the case, and the significant challenges of maintaining the cooperation of witnesses throughout the process, in fact Prosecutor's lost contact with victims with 40% after their first interview . Another interesting factor included the comparison between the numbers of identified adult victims with the number of victims who accepted shelter services.<sup>125</sup> The majority of trafficked victims refused shelter services, which is not related to the quality of services or facilities that ranged from state of the art to modest. In contrast, nongovernmental organization shelters offering rehabilitation services continued to attract young victims whereas the adult victims were not interested in the emergency services provided by the state facilities. One explanation may be related to the fact that Romania is a country of origin and repatriated victims may have already spent time in shelters in their destination country and were not willing to repeat that experience and those victims returning voluntarily more than likely identified locations by the time they were identified as victims through follow up law enforcement investigations. Thus, placement of victims in shelters or the offering of shelter services did not prove to be an effective strategy for maintaining cooperation of trafficked victims.

The majority of trafficked victims, while legal procedures are under way, are not under protection from either the government or an NGO and another alternative explored was sustained contact by the Prosecutor investigating the case or through court appointed legal counsel. However, this solution did not prove to be sustainable since Prosecutors as independent Magistrates did not identify themselves with the victims in the case and once the investigation was completed the Prosecutor had no role in the case and/or another Prosecutor appeared during the trial serving as a liaison with the court and Prosecutor's Office. This Prosecutor is a Procedural Expert who typically does not have contact with the victim and little role directly in calling or questioning witnesses. This meant that victims often did not receive any direct advice or encouragement about their testimonies on behalf of the Prosecutor's Office. Furthermore, court appointed counsel also has a limited role in terms of encouraging victims to maintain their cooperation throughout the trial. Counsel appointments are for a limited time period— for example just for a specific interview or court appearance and often continuity of counsel from appearance to appearance as well as on going representation between appearances is not maintained.

These conditions left the victim witnesses in a vulnerable position feeling as though the system did not care about their needs. Additionally, there was not much consideration of the fact that during the legal proceedings victims are at risk to a number of potential pressures that discourage them from testifying such as: pressure from friends and family who are ambivalent or hostile against the criminal justice system, in some instances Defendants offering bribes in exchange for change of the victim's testimony, and/or threats of retaliation if victims persist to testify. Victims lack a firm understanding of the complex criminal justice system and those processes involved in the investigation and during the trial. The

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<sup>125</sup> Romanian state sponsored shelters assisted less than 45 adult victims between 2001 to 2006 and in 2005 alone the Ministry of Interior reported identifying 1,491 victims of trafficking.

initial reasons for a victim witness to testify may be dissolved due to the increased observance that the system does not place their interests as priority.<sup>126</sup>

Due to the above mentioned circumstances and encouraged by the U.S. Embassy, the Romanian ANAT seriously considered the development of a coordinating mechanism facilitating contacts between the courts and victims leading the way to adopting a victim witness coordination system. The Victim Witness Coordination System was implemented in the southern and eastern regions of the country and 26 victims were placed in the program from November to December 2006. The second phase was implemented in the western and central regions in February 2007.

The ANAT has created fifteen (15) regional centers covering 42 counties that are located in the court of appeals with two (2) Victim Witness Specialists (hereinafter VW Specialists) with social science specializations in each center coordinating local implementation with other agencies<sup>127</sup> and two (2) Specialists located at the central level—one (1) manages the program<sup>128</sup> and the other (1) coordinates the Regional Centers. In terms of duties the VW Specialists have four primary duties: 1) maintain permanent contact with the victim and to provide the victim with information about the status of their case and prepare them for court proceedings; 2) provide general information concerning the court system and trial process reducing the levels of anxiety and intimidation for the witnesses; 3) provide information to the victims regarding their rights and the available regional assistance; as well as 4) provide logistical assistance and ensure safe transportation to the court and/or Prosecutor's Office. There are 42 female Police Officers out of a total of 100 Officers involved in the program with one (1) State level Prosecutor and 50 others spread through the regions. The Romanian Ministry of Interior at the State level provides financial support for the program, draws up the operational plans, and designates through their Office for Witness Protection<sup>129</sup> a contact person between their office and the witness. The SECI Center<sup>130</sup> located in Bucharest

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<sup>126</sup> The Prosecutor who investigated the case or law enforcement officer who initially interviewed the victim are usually not present during the trial and cases are delayed for significant time periods.

<sup>127</sup> Law enforcement, prosecution, courts, social services, and either state based or NGO's

<sup>128</sup> ANAT President, in September 2006, appointed a Psychologist, as the Manager of the victim witness coordination program at the central level within the Monitoring and Assessment Unit in September 2006.

<sup>129</sup> There may be distinctions between how victim witnesses are classified meaning a victim witness may or may not be placed in the "comprehensive" witness protection program managed by The National Office for Witness Protection (NOWP) and there are variations on the levels and types of protection that are applied. The NOWP is a special law enforcement body, who is responsible to implement the Witness Protection law (682/2002) providing assistance and protection measures for victim witnesses as outlined within Article 12. NOWP administers protection and is obliged to: issue a support scheme (assistance measures that can be implemented if raised during support scheme are; reintroduction to another social environment, change of profession, change or guarantee of employment position, income assistance until alternative employment is identified) for each protected witness either as a single or cumulative measure (protection of witness identification, witness statements, "protected witness hearing changing identity" or use of distortion for image and voice, preventative arrest or placement under arrest during the period of punishment or imprisonment with support of penal administration, security measures implemented at the victim's residence and physical protection (travel to and from legal institutions) change of residence, identity, appearance).

<sup>130</sup> In May 1995 the Southeast European Cooperative Initiative Regional Center for Combating Trans border Crime (SECI Center Bucharest) was created as a Euro-Atlantic cooperative where police and Customs authorities cooperate together on mutual projects/interests, not on political issues but as an operative collaboration under the guidance directives from INTERPOL and the WCO. The member states are: Albania,

provided training and the U.S. Embassy sponsored the first in a series of educational programs in November 2006 attended by 70 justice officials. The response has been overwhelming with numerous requests for assistance from Prosecutors and Organized Crime Officers requesting assistance from the ANAT Victim Witness Coordination System. Three additional training seminars are planned for fiscal year 2007, which should improve and increase the number of successful investigations and prosecutions.

### **Romanian Delegation Visit to the U.S.**

The U.S. Embassy in Bucharest initiated a U.S. study tour for Romanian Officials (hereinafter Delegation) in June 2007 as part of a continuing education series to observe implementation of best practices in selected U.S. Victim Witness Coordination Systems and to exchange ideas with experienced professionals working in the field with a variety of victims. The series assists the ongoing efforts to build the capacities of the current Romanian Victim Witness Coordination System. The delegation visited a number of facilities located in Washington, D.C.; Brooklyn, New York; and San Diego, California. The participants, as well as the U.S. Embassy Official accompanying them, benefited substantially and learned new ways of managing a coordination system, as well as alternative solutions that can be implemented given situations where resources are constricted and/or where “traditional” types of protection and assistance may not achieve the most ideal results given that the types of cases the system is dealing with may require an innovative approach and solution. The Delegation learned this from professionals conducting street outreach programs and those juggling caseloads of victims, who have experienced a variety of violent crimes.

The Delegation started in Washington, D.C. observing how the federal system operates in the “ideal environment” within the U.S. Attorney General’s Office visiting the District of Columbia’s Victim Witness Assistance Unit, whose former Chief Heather Cartwright managed a team of 26 persons and provided numerous forms of support and assistance to victims and witnesses. This office has programs providing assistance to victims in cases involving child abuse, sexual assault, domestic violence, homicide, terrorism, other types violent crimes, witness security, and victim notification<sup>131</sup>. Ms. Cartwright was appointed recently as the Director for the Office of Justice for Victims of Overseas Terrorism and provided training for the initial group of Romanian officials when the program first started. The Delegation learned that many best practices developed over time and these were incorporated within the system and implemented when new cases came forward. In fact, it appears that the system will always require a certain amount of adaptation since violent

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Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, F.Y.R. of Macedonia, Moldova, Romania, Serbia, Slovenia, and Turkey.

<sup>131</sup> [www.prnewswire.com/cgi-bin/stories](http://www.prnewswire.com/cgi-bin/stories) „Justice Department Names New Director of Office of Justice for Victims of Overseas Terrorism 06 June 07—U.S. Attorney General's Office.

crimes themselves are constantly changing and adapting to the methods used by the criminal themselves. The types of victims this office handles are considered to be extremely sensitive and nontraditional due to the complex social environment and given that many also have collateral criminal issues—not to mention the complications associated with what is known as the “pimp culture”. Additionally, these victims do not see themselves to be victims of trafficking and considerable time and education efforts are needed to change their perceptions. The cases usually involve minor, domestic victims of trafficking and are incorporated into the juvenile justice system. The situation whereby the cases are adapted to the field and not exclusively handled by the criminal justice system, which is the norm in European models, created a feeling of uncertainty for the Romanian delegation. This perhaps will diminish when they become more experienced in dealing with alternative methods of working with their cases and they observe increased positive outcomes that will also be reflected in the development of the case law and corresponding jurisprudence.

The Delegation went on to observe practices in the Manhattan District Attorney’s & the New York County District Attorney’s Offices Witness Aid Service Units (hereinafter WASU). WASU is an “in house program” that offers a full menu of assistance services for victims that are integrated into the program. The program can provide these services completely in house since it is very well funded. The Witness Liaison Service is successful and has reduced the dropout rate of participating victims for three important reasons: 1) cases are followed from the first moment of contact by the program services providers (Case Managers) directly delivering services to trafficked victims until completion and if necessary for as long as the victims require their support; 2) victims are encouraged to participate and remain in the program since they see that the system cares about them and their needs; and 3) there is no time limitation restricting trafficked victims in terms of requesting support or services—victims can return to WASU “forever” and this is not contingent upon whether they initially collaborated with the law enforcement system. An interesting characteristic the Delegation learned was that trafficked victims usually do not initially participate in the criminal proceedings or cooperate with law enforcement, however often these victims experience additional victimization and crimes and they return to WASU and participate—“the word on the street spreads” and credibility and confidence in the system builds leading to increased prosecutions and gathering of information and evidence. Psychological and counseling services are available on site from trained professionals and the program is flexible.

The Delegation also visited the Harlem Domestic Violence Cooperative (East Harlem Neighborhood Based Alliance Corporation hereinafter Cooperative). This Cooperative has extensive experience dealing with numerous varieties of victim witness issues. The Cooperative noted that domestic violence victims exhibit the same types of psychological trauma that mirrors that experienced by trafficked victims. It was particularly relevant for the Delegation to observe since many of these issues are pertinent to those affecting trafficked victims such as: immigration, language, dependency, and social dysfunction just to name a few. This cooperative is well developed although protection of a victim’s confidentiality and information is an ongoing issue. The cooperative recently (and does so on a regular basis) organized a meeting with all of the Police Officers working on the domestic violence cases (over 100 Officers) whose victims receive services from the cooperative as a “team building” exercise to improve relationships, cooperation,



communication, and trust. The final visit included a tour of a health care facility offering specialized services for sexual assault cases and technical equipment used to gather evidence.

The third city the Delegation traveled to was San Diego to learn how victims and programs are managed in the “field” and in reality how financial and logistical resources are maximized since there are never sufficient means to serve the actual needs. The Delegation visited a border crossing and described the situation as—“staggering” due to the range and complexity of the problems observed and needing solutions (illegal immigration smuggling, THB etc.). All agreed that establishing Victim Witness Coordination Systems are difficult undertakings and working with trafficked victims is challenging and complex. Professionals must incorporate flexibility into any system, be willing to adjust programs, and “think on their feet” acting swiftly within time constricted and culturally sensitive deadlines to meet the needs of trafficked victims.

The Delegation learned and observed additional best practices implemented in the field such as the “Family Justice Centers concept” and street outreach work performed by nongovernmental organizations<sup>132</sup> which entails going out on the streets located in “at risk” areas known for prostitution, violent situations, and drug other substance abuse practices and observing potential victims as well as approaching them to provide information on the available services and to offer protection. Outreach workers develop relationships with street and other socially vulnerable persons to offer assistance and services. These outreach/relationship building efforts are initially met with resistance (a victim’s personal security can be compromised and establishing trust takes time and in some cases may never form depending on the “potential” victim). The Federal Bureau of Investigation (FBI), as an additional intelligence exercise to support gathering of evidence leading to increased, successful investigations sends undercover agents to conduct field outreach work. Again, the Delegation learned that often at risk victims and/or those suspected to be victims reject contact either because they are not interested or more than likely they do not want to be seen together with the Officers—as this places them in compromised position creating suspicion and danger among their “peers” or the traffickers themselves. However, it has been noted that persistence prevailed in some cases and lead to enough evidence to conduct an investigation.

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<sup>132</sup> [www.polarisproject.org](http://www.polarisproject.org) Polaris Project Street Outreach Program combines direct intervention, survivor support, policy advocacy, and movement building in a comprehensive approach to combat human trafficking and modern-day slavery. Polaris Project implements both direct outreach and community outreach to work to increase victim identification. Direct outreach methodologies focus on directly reaching potential victims and have been developed and refined by Polaris staff in partnership with survivors and women in the sex industry. These methodologies are primarily implemented in institutional settings such as the courts and DC Jail, in collaboration with criminal justice staff. Populations of specific expertise include Korean commercial sex networks including massage parlors and hostess bars (room salons), domestic pimp-controlled street prostitution, and residually-based Latino and Chinese commercial sex networks. The staff has pioneered a variety of techniques for identifying sex trafficking locations and analyzing the operations of the networks. Outreach materials have been produced in partnership with survivors, and are currently available in English, Spanish, Korean, and Chinese, containing information on the rights of victims, how to get help, and the phone number of the Polaris office and the Polaris Project Hotlines. Community outreach efforts focus on raising the vigilance of intermediaries who may come into contact with potential trafficking victims in the course of their daily work. These efforts include local trainings and presentations and the distribution of outreach materials in organizational settings.

## **X. BiH State Obligations to Bring Perpetrators to Justice & Victim Witness Protection**

Victims are persons, who individually or collectively suffered harm including physical and/or mental injuries, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states including those laws prescribing criminal abuse of power.<sup>133</sup>

A victim is considered as such regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted and can include the immediate family or dependants of the direct victim, and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

The definition of who constitutes as a victim is crucial since it determines who is eligible to receive material and legal assistance—as well as other rights that are mentioned within the national and international laws. The fundamental rights of victims serve as a core basis for the elaboration of substantive and procedural safeguards such as: “the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected during various stages of procedures, and the right to have allowances provided for the disadvantage of living in a different state from one in which the crime was committed”.

Legal provisions critical to the victim’s interest are not confined to the criminal proceedings alone and can cover certain measures to assist victims prior and after the criminal proceedings in an effort to mitigate the effects of the crime. The term “proceedings” is broad and includes not only criminal proceedings but all contacts between the victims and any authority, public service, or victim support organization in connection with their case before, during, or after the criminal process.

The failure to bring to justice and punish those responsible for serious violations of human rights and humanitarian law, especially those participating in organized crimes of a serious nature such as trafficking in human beings for the purposes of sexual exploitation is considered impunity. Responsibility, as a concept, in connection with States has developed to recognize that States are obliged to take preventative and punitive measures where human rights violations occur by private and/or public actors. International law previously was limited to violations of human rights committed by State actors. The European Court of Human Rights and other tribunals have established that the State’s duty is to not only protect its citizens from such violations but also to investigate violations when they occur and bring perpetrators to justice. Thus, a State may be held as a complicit party and liable when it systemically fails to assume due diligence by implementing positive steps to protect,

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<sup>133</sup> [www.ohchr.org](http://www.ohchr.org) Definition of a Victim: Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power: victims of crime, access to justice and fair treatment, restitution, compensation, assistance, victims of abuse of power.

prosecute, and punish actors who commit abuses. However, complicity must be established by demonstrating that the State condones a pattern of abuse through pervasive non action.

Therefore, while Bosnia and Herzegovina does not *actively* participate in the trafficking of persons for the purpose of sexual exploitation, it can be argued that due to allegations of endemic corruption that political and public persons connected to organized crime networks who may be engaged in trafficking of human beings for the purpose of sexual exploitation that the state is a complicit party. Frequently it appears that some BiH authorities routinely disregard evidence of such activities or fail to investigate those under its service that may be involved, and is thereby failing to take the minimum steps necessary to protect those living within its territory as well as failing to adequately protect their physical integrity and in dire situations their life. Inactivity exhibited by BiH could thus cause the state to be held responsible for violations of human rights and BiH should consistently send a strong message that such activities will not be tolerated and will be punished. Support for the investigation and conviction of suspected public persons should be pursued and highlighted when successful.

BiH can positively promote and increase its efforts of due diligence through law enforcement, justice departments, health and welfare personnel, and government programs that prevent and protect victims of violence through the creation of a functional, comprehensive victim witness coordination system operating within a legal framework and transnational referral mechanism. Adoption of such a system will be a component of numerous, concrete indicators that BiH is actively pursuing due diligence through the progressive realization of activities aimed at ensuring that the existing laws and procedures in place are applied and if necessary additional legislation will be introduced to properly protect the rights of its citizen's as well as aliens within its territory.

When BiH increasingly punishes perpetrators through the judicial system this will send a clear message that serious violations of human rights will not be condoned and those who commit such crimes will be held accountable thereby contributing to the development of the rule of law as well as promoting policies determined to sanction impunity.

### **Development of a BiH Victim Witness Coordination System**

Sufficient victim witness protection affirms the quality of the rule of law environment within a country. In July 2007, as an additional positive measure, Bosnia and Herzegovina adopted Rules on Protection of the Victims and Victim Witnesses of Trafficking in Human Beings, for citizens of BiH and previously revised the criminal procedure codes, criminal codes, witness protection laws, established the position of a State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration, and a State Protection and Investigation Agency thereby providing the mechanisms further supporting and building upon the counter trafficking structures and creating the legal basis for victim witness protection and the formation of a Victim Witness Coordination System. Judicial, prosecutorial, and civil servant agencies practices will further elaborate how these provisions

will function in practical terms and it is important that an effective monitoring and evaluation system be created, which is managed properly, and report —taking swift action when procedures work against the interests of victim witnesses. Furthermore, together with a sustainable counter trafficking program supported by a codified national referral mechanism<sup>134</sup> will enable victim witnesses to access different levels and types of procedural and non procedural rights from the moment of identification to post proceedings and if developed properly— beyond. These protections should be created in a manner in order to meet the personal specific needs of victim witnesses and be flexible enough to adapt if necessary to the ever changing nature of risk and developing criminal elements over time.

Legal reforms and assistance/protection systems ideally must be complimented by significant, ongoing institutional coordination and the development of best procedural practices to ensure that victims are properly identified, provided with assistance and protection, and have access to justice respecting their human rights in order to take independent informed decisions as well as remedies available in the event that the systems, procedures, or responsible authorities fail. The establishment of a codified National Referral Mechanism complimented by a Victim Witness Coordination System will greatly assist this coordination. The BiH State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in cooperation with all other authorized institutions should ensure that sufficient financial resources are available for the proper functioning of the Victim Witness Coordination System and as well undertake advocacy efforts among the offices of donors at the international, regional, and state agencies involved in this process in an effort to promote solid practices, codes of conduct that are victim friendly while at the same time respecting the rule of law. The international community, regional partners, and identified in country experts should provide technical, logistical, and financial assistance/advice and capacity building measures in order to create this system, as well as facilitate efforts to engage service providers, civil society, the religious communities, local community leaders, and gender agencies & commissions within this process. All of these efforts will go far in achieving the success and functionality of the system and in turn promote a stronger, more equitable and healthy future for all BiH citizens and the country.

## **Conclusion**

Why does BiH need a Victim Witness Coordination system? Placement of victims in shelters and/or offering of shelter services—despite their high quality and the provision of legal aid (court appointed and/or pro bono) have not proven to be effective strategies for maintaining the cooperation of trafficked victims, ensuring comprehensive delivery of services or protection, increased prosecutions, or their engagement within the criminal justice system. Victim Witness Coordinators, who remain in contact with victims, increases the

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<sup>134</sup> [www.anti-trafficking.net](http://www.anti-trafficking.net) Anti Trafficking Activities should be: 1) a comprehensive human rights and victim centered approach 2) all relevant actors including civil society should be involved in the design and implementation of anti trafficking responses both at the national and regional levels—“multi agency approach” 3) government ownership 4) sustainable activities

victim witnesses understanding of and engagement within the criminal justice system which leads to more successful prosecutions, as well as ensures advocacy for assistance.

According to the U.S. and Romanian experiences—continued, consistent coordination resulted in increased services and more successful identification of trafficked victims. In the U.S. success appears to be highly dependent upon consistent communication/coordination among service providers—civil society—faith based organizations. This is why, along with the above mentioned recommendations, roles, and responsibilities among all stakeholders must be clear and delineated so assistance and protection is provided throughout the process. Further development of an extensive network of assistance agencies (include agencies dealing with victims of torture) is also crucial.

The U.S. Brooklyn example of “Family Justice Centers” providing all services in house and the concept of the *Witness Liaison Service* has also proven to be very successful and has reduced the dropout rate of participating victims for three important reasons: 1) cases are followed from the first moment of contact by the program services providers (Case Managers) directly delivering services to trafficked victims until completion of court cases and if necessary for as long as the victims require their support; 2) victims are encouraged to participate and remain in the program since they see that the system cares about them and their needs; and 3) there is no time limitation restricting trafficked victims in terms of requesting support or services—victims can return to the center “forever” and this is not contingent upon whether they initially collaborated with the law enforcement system.

Romania implemented a Victim Witness Coordination System in two regions during the first phase and within two months 26 persons were included in the program and prosecution rates increased over 100% during the first six months. According to both the U.S. and Romanian examples best practices developed over time and have been incorporated within the system and implemented when new cases come forward. In fact, it appears that any system will always require a certain amount of adaptation since violent crimes are constantly changing and adapting to the methods used by the criminal themselves. The U.S. has learned the following, which is applicable also to BiH—many victims do not see themselves as victims of trafficking and considerable time and educational efforts are required before they change their perception. The cases usually involve minor, domestic victims of trafficking and the system should be adapted to the situation in the “field” and not exclusively handled by the criminal justice system.

To facilitate communication and coordination “team building” exercises among law enforcement, shelters, and service providers should be organized to improve relationships, cooperation, communication, and trust. Professionals working with trafficked victims must incorporate flexibility into any system, be willing to adjust programs, and “think on their feet” acting swiftly within time constricted and culturally sensitive deadlines to meet the needs of trafficked victims.

Both the U.S. and Romanian professionals agreed that establishing a Victim Witness Coordination System is a difficult undertaking and working with trafficked victims is challenging and complex. Prior to creating a Victim Witness Coordination System, BiH

authorities should request that Victim Witness Experts from the U.S. and as a regional experience the relevant Romanian Colleagues visit BiH and vice-versa to observe and exchange experiences and field practices.

BiH should consider carefully where and how in the first phase to implement Victim Witness Coordinator's. Initially it is recommended within two of the four SIPA Regional Offices with focal points from the service providers (social welfare-psychologist-health care worker) co-located in those centers, as well as at the central level in the SIPA Director's office and in the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration Office. As the program expands and increases its visibility, success, and credibility Victim Witness Coordinator's can be implemented in other locations such as the Canton/District Social Welfare Center's, in the Canton/District Prosecutors Offices, and within other professional service provider offices. However, ultimately the creation and development of a BiH Victim Witness Coordination System for trafficked victims should be discussed further with the BiH State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration and the SIPA Head of the WPD.

## **XI. Final Recommendations**

### **Laws**

1. Adopt a rulebook connected to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses regulating the provision of services (clear delineation of roles and responsibilities), protection and care; guidelines for government agencies in relation to delivery of assistance; protection of witnesses<sup>135</sup>; protection of data; and pursuant to a victim witness coordination system within a national referral mechanism.
2. The BiH State Court Witness Support Office & the SIPA WPD requested amendments to the Witness Protection Law (regarding the Witness Protection Hearing process).
3. Advocate for Judges and Prosecutors to implement the criminal and civil restitution procedures—since these avenues are rarely pursued.
4. Procedures to confiscate, place liens, or collected fines on the assets of criminals or those complicit with organized/criminal acts should be pursued immediately rather than waiting for the issuance of final verdicts and used to fund restitution, assistance, and protection programs (i.e. State Compensation scheme) pursuant to (24 April 2002

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<sup>135</sup> Council of Europe 22 June 2006 draft: Development of Reliable and Functioning Policing Systems and Enhancing of Combating Main Criminal Activities and Police Cooperation—"Procedural Protective Measures for Witnesses: Training Manual for Law Enforcement and Judiciary". Witness—means any person who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status and of the direct or indirect, oral or written form of the testimony, in accordance with national law) who is not included in the definition of collaborator of justice.

BiH ratified) the European Convention on the Compensation of Victims of Violent Crime, Victim Advocates/Advisors & NGO's.

5. Amend the Witness Protection Laws and criminal procedure codes to implement procedures assigning a Victim Witness Advocate/Coordinator to every victim irrespective if the victim participates in the criminal justice system. The Victim Witness Coordinator will ensure assistance and protection is accessible and available as long as necessary and that victim witnesses are accompanied to prosecutor hearings and trials.
6. Codify the National Referral Mechanism<sup>136</sup> under the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration. Include all of the relevant state agencies, service providers, and inter-agencies.
7. Pursue measures to harmonize all criminal procedure and criminal codes, social assistance and health laws eliminating discrimination possibilities and creating the minimum allowable standards across the country.<sup>137</sup>
8. Adopt Title IV Acts of the Treaty on European Union Council Framework Decision of 15 March 2001 Articles 31 and 34 (2) b "On the Standing of Victims in Criminal Proceedings" incorporating the articles within the investigation, prosecution, and trial procedures<sup>138</sup>.
9. Codify "a Victims Witnesses Bill of Rights".<sup>139</sup>

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<sup>136</sup> Section V 3.1 to 3.6 OSCE Permanent Council Decision No. 557 (PC DEC 557) OSCE Action Plan To Combat Trafficking of Human Beings 24 July 2003 ("OSCE Action Plan"). The OSCE Action Plan to Combat Trafficking in Human Beings (OSCE Action Plan) obliges participating states to establish a National Referral Mechanism for victims of trafficking in person to facilitate the accurate identification and appropriate treatment of victims of trafficking in ways which respect the views and dignity of the person concerned and to work together with NGO's in this respect.

<sup>137</sup> Recommended by OSCE Mission to Bosnia and Herzegovina--Please see the OSCE Mission to Bosnia and Herzegovina report: "Assessing the Realization of the Right to Social Assistance in Bosnia and Herzegovina" (December 2005).

<sup>138</sup> [www.eur-lex.europa.eu](http://www.eur-lex.europa.eu): European Council Framework Decision on the Standing of Victims in Criminal Proceedings—definitions, respect & recognition, hearing and provision of evidence, right to receive information, communication safeguards, specific assistance to the victim, victims expenses, right to prosecution, right to compensation, penal mediation, victims residing in another member state, cooperation between member states, specialist services and victim support organizations, training for personnel in contact with victims/proceedings, and conditions of victims in proceedings.

<sup>139</sup> Defense Institute of International Legal Studies, Department of Defense Security Cooperation Agency and [www.usdoj.gov/usao/dc/Victim\\_Witness\\_Assistance/Federal\\_Victims\\_Rights.html](http://www.usdoj.gov/usao/dc/Victim_Witness_Assistance/Federal_Victims_Rights.html) (U.S. Attorney's Office Federal Victim's Rights) Federal Crime Victim Protection & Witness Assistance: Criminal sanctions AND Victim's Rights & Restitution Act of 1990—Victims have the right to be—treated fairly, reasonably, with respect for the victim's dignity and privacy; reasonably protected from the accused; receive timely notification of court proceedings & that the proceedings are free from unreasonable delays; be present in court and be heard. Victims have the right to receive—full & timely restitution; information about the conviction, sentencing, imprisonment, and escape/release of the accused; right not to be excluded unless the court receives clear and convincing evidence that testimony by the victim would be materially altered if the victim heard other testimony during the proceeding and confer with the attorney representing the government in the case (does not have direct authority for the prosecution); Crime Victim Compensation: Victim's Act of 1984; State

10. BiH should ratify and amend the Criminal Codes to criminalize the use of services and address the demand side of trafficking according to the Council of Europe Convention Action Against Trafficking in Human Beings, which open for signature on 16 May 2005.<sup>140</sup>
11. Develop, advocate, and ensure that a Law designating a system of free legal aid in BiH is enacted.

**Bilateral & International Agreements, Diplomatic Relationships, &  
Protection of BiH Citizens**  
(Trans-border cases)

12. Ensure that the relevant service providers and judiciary have clear procedures and definitions on all issues related to international legal cooperation including specific points of contact.
13. Issue guidelines for victim witnesses' concerning material and personal (procedural and non procedural protection) guarantees that are contained within the European Convention for Mutual Legal Assistance<sup>141</sup> in connection with international summons and the consequences of appearances, which can also be used even by reciprocating states in the event that they are not contradictory with their own procedural laws. Create checklists or inventories of the protection and assistance available in those countries along with the legal provisions and network of international, nongovernmental, and services providers within those states.

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Programs—Federal funds to support state programs (funding tied to certain criteria); Collected from fines paid by persons convicted of crimes. State Programs: Crime victim compensation programs exist currently in every state covers victim's out of pocket expenses (medical & hospital bills, lost earnings, funeral/burial expenses) The U.S. Attorney General: May provide documents to establish a new identity, Housing, Transportation of household contents to new home. Department of Defense Programs on Victim/Witness Rights: Installation of Victim/Witness Councils; Training programs for Providers, Local Victim/Witness Coordinator, Oversight Procedures, Requirement to provide victim/witness with information and services. Initial information during investigation: Available medical & social services, Availability of restitution from criminal, Availability of transitional compensation, Availability of support services, Legal prohibitions intimidation & harassment, Overview of criminal justice process, Contact persons & phone numbers, Status of investigation, The arrest of the suspect, Decision(s) not to pursue prosecution, Preferral and referral of charges. Information upon confinement of offender: Date of clemency or parole hearing, Transfer of inmate to another facility, Escape or return of inmate, Release of inmate to parole supervision, Death of inmate if in custody. Compensation: Restitution can be a condition of a pre-trial agreement, Conditional non-judicial punishments.

<sup>140</sup> BiH should consider amending the criminal code implementing penalties for the use of prostitution and the exploitation of a victim of trafficking. The implementation of criminal penalties engaging in prostitution and/or those of a trafficked victim sends a strong message to the community that persons participating in those crimes will be held accountable. Furthermore, those persons could also be a source of intelligence for police due to their collaborative relationships with potential victims. Many states in the U.S. and Europe have done so to address the demand side of trafficking.

<sup>141</sup> Ad hoc, rare application in BiH--need to strengthen this mechanism and ensure consistent approach.



14. Conclude with all countries of origin, transit, and destination bi-multilateral agreements concerning using telephone and video link conferencing so that victim witnesses are not obliged to travel abroad or provide live in court testimony. This will reduce the length of stay for victim witnesses' in shelters if he/she wishes to return to their country of origin.
15. Ensure that laws and procedures are developed clarifying victim witness rights and develop formal guidelines for Prosecutors and Judges dealing with international requests for extradition, transfer, and commissions summoning witnesses for cases abroad to protect BiH citizens, who are subjects of state's requests for proceedings transfers or summoned to be witnesses in cases abroad. The Prosecutor's Office should develop secure and confidential ways of delivering summons to victims, concerning the provision of assistance and protection when victims are abroad guaranteeing protection of their information, anonymity, and confidentiality throughout the procedure.
16. Ensure that Law Enforcement has transparent agreements outlining the manner, nature, and limits of police cooperation.
17. BiH should coordinate with the region to improve efforts to identify trafficked victims and implement protection measures enhancing regional legal cooperation and the prevention of refused legal assistance.
18. The Ministry of Foreign Affairs should extend protection for BiH citizens abroad using diplomatic channels with the primary countries of destination, origin, and transit regulating reciprocity agreements connected with visas and other immigration matters.
19. Encourage within the region the development of Victim Witness Coordination Systems functioning within Transnational Referral Mechanisms, adherence to (human) a rights based approach respecting international conventions and jurisprudence, as well as the delivery of assistance and protection, and punishment for cases of impunity and/or corruption/complicity.

### **Professional Service Providers**<sup>142</sup>

20. Develop a victim witness code of ethics for all public(civil servants)-private service agencies providing protection and assistance to victim witnesses.<sup>143</sup>

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<sup>142</sup> Professional Service Providers include: social workers; health care workers; psychological assistance and victims of torture specialists; those dealing with employment, education, training, and work permits; immigration, foreign affairs, border police, and security officials; accommodation , NGO's-shelter providers; drug and alcohol abuse professionals; and legal aid professionals.

<sup>143</sup> [www.theiacp.org](http://www.theiacp.org) International Association of Chiefs of Police Best Practices Guides: 1) Maneuvering in the Political Environment; What Do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime” “What do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime”: Guiding principles—1) respond equally, respectfully, and compassionately to all victims; 2) protect victims from further victimization,

21. Develop concrete programs and implement mechanisms to fund social and financial assistance, health and psychological treatment, employment and training (vocational) assistance, as well as the provision of financial support for victims family members if needed funded from the confiscated assets of the traffickers and a state fund. Prepare in advance a comprehensive plan for the basic level of protection with gradual progressive realization.<sup>144</sup>
22. Agreements and laws should specify which agency is the competent authority to receive and take decisions on requests for assistance and protection. These agreements should include criminal and administrative procedures that victim witnesses and/or others can take action for impunity or non compliance when rights not provided. Such information should be provided to the victim witness both orally and in written.
23. Ensure that assistance and protection mechanisms are institutionalized and applied in every case following an individual case approach<sup>145</sup> through a Victim Witness Coordinator to reduce the current ad hoc basis approach.<sup>146</sup> The development of assessment tools utilizing non discriminatory criteria must be employed and distributed to all agencies for both alien and domestic victims irrespective of where they are identified within the country and of their immigration status. Furthermore, deliver technical, financial, and logistical resources throughout the country within a reasonable timeframe especially for the entities, cantons, and eventually the municipalities. Since those agencies do not comprehend what is expected of them in terms of their roles, lack financial resources, clear laws.

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to the extent possible; 3) refer victims to crisis and support services as soon as possible; 4) provide a “seamless continuum” of services and support for crime victims; 5) inform victims about their rights and the justice system process; 6) empower victims to participate in the case processing; 7) schedule investigative, court, and post sentencing proceedings to facilitate effective victim participation; 8) ensure continuity of advocacy services; 9) focus on repairing damage done by the crime; 10) notify victims of changes in offender status; 11) encourage victims to tell their stories and listen carefully; 12) provide opportunities that enable victims to assist other victims and serve the justice system; 13) engage victims in policy and protocol development.

<sup>144</sup> Ruth Rosenberg (2006) USAID Shelters Assessment in Bosnia and Herzegovina”. “Expand the mandate of government-service agencies (social welfare centers-education institutions-employment offices-hospitals-health care providers) to provide services free of charge to trafficked victims. Additionally, provide education, counseling- tutoring-mentoring- vocational training, job placement, advocate for free medical services, long term psycho-social support, full time, professional counseling for staff, develop systems for gradual reintegration and alternative accommodation, develop protocols for assistance to different categories of victims, individual security assessments, and placement in appropriate shelters.”

<sup>145</sup> (2007) “ICMPD Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe”, Rebecca Surtees Nexus Institute. “Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe”. “Importance of individual case-by-case approach.”

<sup>146</sup> [www.theiacp.org](http://www.theiacp.org) International Association of Chiefs of Police Best Practices Guides: 1) Maneuvering in the Political Environment; What Do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime”: Strategies to implement principals—1) commit to crime victim support and assistance; 2) collaborate across services and agencies; 3) organize to deliver services and support to crime victims; 4) focus on victims’ rights and needs; 5) support professionals who serve crime victims; 6) engage communities in addressing crime victims needs.

24. Create standard operating procedures (hereinafter SoP's) regarding assessments of the victim witness's social, financial, educational, health, and psychological requests and for the witness's family. Promote the "minimum allowable standards" and identify a network of responsible service providers to deliver a wide range of services, and promote a "victim centered approach".<sup>147</sup>
25. Compile a manual dedicated to and outlining victim witness protection including national and international laws that address violence against women (include specific recommendations regarding victims of human trafficking, gender, sexual, and domestic violence).
26. Create Victim Witness Coordinator positions in Social Welfare Centers at the entity and canton, district levels.
27. Implement safety/risk planning standards for staff & in designing risk assessments for trafficked victims according to the Safe Horizon Guidelines (#56 under United States References).

#### **BiH Judiciary & BiH State Prosecutor's Office**

28. The BiH State Court Working Group should adopt as a priority Rules of Procedure connected with protection of information, confidentiality, and guarantees of protecting victim witnesses through all phases of the criminal procedures (from pretrial, investigation, issuance of the indictment, trial, sentencing, and how the trial record is archived including evidence and court files). Additionally, develop future measures to assure redactions to the electronic records since this equipment is currently not available.
29. Eventually all courts and law enforcement structures should be provided with additional operational infrastructure (teleconferencing and equipment to video tape testimonies). All courts should be adapted as victim friendly (special waiting rooms for victim witnesses to provide testimony to avoid contact with the Defendant prior to trials) currently only available at the BiH State Court.

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<sup>147</sup> A victim centered approach includes: conducting risk assessments, identifying a network of service providers, employment of nondiscriminatory criteria, and ensuring access to a full range of benefits including: relocation (if deemed necessary), financial assistance, employment, education, medical and psychological care, change of identity and personal documentation, reduced sentences (plea bargains or freedom, etc for providing information) and others for victim witnesses and their families irrespective of whether they participate in criminal proceedings, are relocated abroad, or remain in BiH. Victim Witnesses, who are not criminals, should be able to receive increased benefits especially if they are crime victims such as financial compensation and additional assistance towards rebuilding their lives. Initial placement within a witness protection program could be temporary, depending upon the circumstances, and after witnesses are safely placed or "hidden" the initial decision can be reviewed as part of the continuous risk assessment that should be conducted to determine if protection is still required and in terms of the investigation status.

30. Continue to support and build the capacities of the BiH State Court Witness Liaison Officer and change this position title to Victim Witness Advocate or Coordinator.
31. Develop informative brochures/fact sheets explaining court procedures for victim witnesses ensure these are available, provided, and produced in a “reader friendly format”. Create other media means for illiterate/blind/disabled persons.
32. Court Support Networks should be established in all entity, canton, district courts (currently within selected nongovernmental organizations) offering information concerning court activities & rights/assistance for victim witnesses as part of a comprehensive community outreach effort (encourage regular public visits to courts, police stations from victim associations etc.)
33. Prioritize the conclusion of the Witness Protection Memorandum of Understanding (MoU) between the BiH State Court Witness Support Office and the SIPA Witness Protection Department that expired in March 2007.
34. Secure donations to establish a “central prison” and advocacy efforts to maintain secure penal institutions staffed with multiethnic, trained professionals.
35. BiH State Prosecutor’s Office should continue cooperation with countries in the region to devise strategies and coordinate exchanges of data, documents, evidence, and practices to improve the regional legal frameworks and mechanisms to fight more effectively against organized crime.
36. BiH State Prosecutor’s Office should continue to coordinate with BiH institutions from the Field of Intelligence, Security and Police Activities (Ministry of Defense, Ministry of Security, the State Investigation and Protection Agency (SIPA), Border Police, and others to improve security and territorial integrity within BiH fighting against all forms of grave crimes.
37. Create a Victim Witness Advocate or Coordinator position in the BiH State Prosecutor’s Office.
38. Separate investigation and protection procedures allocating protection to SIPA/local law enforcement.
39. The Courts and Prosecutor’s Offices should implement increased activities associated with pre-trial services, supervised release programs, and use of victim witness impact statements during trials.

### **SIPA & Local Law Enforcement**

40. Develop and implement standard operating procedures connected to sensitive questioning techniques in line with the issued WHO Ethical and Safety Recommendations for Interviewing Trafficked Victims.
41. Once investigation and protection procedures have been separated develop criteria and standard operating procedures regarding regular risk assessment/safety planning (reviewed throughout the entire process) to ensure protection application from the moment of identification. Consider the Safe Horizon Guidelines (see #56 under United States References).
42. Create Victim Witness Advocates or Coordinators positions placed in the SIPA regional offices, who will cooperate with local law enforcement, judiciary, and services agencies as well as be involved/present in risk/safety planning to ensure that the victim understands and is informed concerning the nature/scale of threats, available assistance and protection, and conditions of accessing those assistance and protections.
43. The Victim Witness Coordinators should remain in contact with victim witnesses throughout the process and beyond the proceedings promoting an “open door” policy if victim witnesses need assistance and protection. Victim Witnesses should have 24 hour contact number.
44. Increase recruitment of female SIPA and local Police Officers; implement team building exercises improving the relationships between SIPA--local law enforcement-Prosecutor’s Offices to reduce the professional jealousy and other problems involving local law enforcement officers, who are not willing to share intelligence with SIPA personnel.
45. Provide the obligation for law enforcement to provide victims with comprehensive information concerning their rights to assistance (all forms), regarding criminal proceedings, the possibility as an injured party, representation and presence of Victim Witness Coordinators and legal advocates during questioning, and inform them about the existing procedural and non procedural protection measures (both orally and in written).
46. Develop SoP’s regarding protection of data and information for all public and non-public agencies (victim witnesses and/or SIPA Officers--production or alteration of cover documents-change of identities informing the SIPA Witness Protection Department of all requests to release data designated to them).
47. The WPD Head should continue promotion of the four regional centers and in cooperation with Media develop information campaigns regarding victim witness programs along with community outreach efforts to improve confidence in the Witness Protection Department.

48. BiH Chief Prosecutor & and a focal point from SIPA should manage the Strike Force (continue to develop the relationships between SIPA & Prosecutor's offices) along with the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration. Promote among the other relevant stakeholders communication, cooperation, conduct during investigations, gathering/exchanging of intelligence, and formation of operational investigation teams<sup>148</sup> despite the fact that this will be a continuous challenge.
49. SIPA and the BiH State Prosecutor's Office need to consider implementation of methods like those within the Romanian Victim Witness Coordination System regarding protection for trafficked victims if prosecution of (domestic esp.) trafficking (and high profile organized crime) cases are to be more successful in the future.
50. Local law enforcement and SIPA Officers should distribute "business cards" to victims and civil society (during community policing efforts) with the contact information for all local/regional assistance providers (shelters, domestic violence assistance, hotline numbers, social welfare centers, health centers, with SIPA and law enforcement contact information, as well as the Victim Witness Coordination System personnel).
51. Develop a "Law Enforcement Action Agenda" promoting victims' rights and serving their needs.<sup>149</sup>
52. As requested by the SIPA Director, provide an international Witness Protection Advisor seconded to the Witness Protection Department for assistance and technical advice (minimum of two years).
53. Cultivate an environment promoting that SIPA and other law enforcement agencies implement practicable solutions when issues or problems not envisioned within the

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<sup>148</sup> Stakeholder commitment is essential to implement successful programs and provide protection/assistance. Advance preparation, conference calls, and protection of information are essential when planning raids. A list of provisions prepared in advance to ensure all of the conditions are in place such as: logistics, legal aid, interview procedures, roles, translation services, assistance and selection of victim witness coordinators etc to ensure successful collection of evidence.

<sup>149</sup> [www.theiacp.org](http://www.theiacp.org) International Association of Chiefs of Police Best Practices Guides: 1) Maneuvering in the Political Environment; What Do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime"—A Law Enforcement Action Agenda: 1) formalize organizationally victim assistance; 2) train all first responders to provide a "psychological first aid" to crime victims; 3) develop written protocols to enable responding officers and investigators to treat crime victims; 4) partner with victim assistance professionals to ensure that crime victims receive prompt and effective support; 5) supply written information to all crime victims during the first contact; 6) designate individuals within each law enforcement agency that victims may contact to obtain information; 7) develop written death notification policies and procedures and conduct complimentary mandatory training; 8) establish mechanisms to ensure that crime victims and their families receive necessary emergency assistance; 9) coordinate crime scene cleanup as soon as possible after the investigation is complete; 10) ensure that crime victims experience a smooth transition from investigation to prosecution; 11) systemically assemble victim feedback; 12) support officers dealing with their own stress and trauma; 13) cross train law enforcement and victim assistance personnel; 14) promote regular engagement among victims, advocates, community members, law enforcement, and other criminal justice professionals.

legislation arise. As best practices develop incorporate these into new case load approaches. Develop capacity training to respond to crisis situations and prepare and plan in advance (contingency plans) for the unexpected. Promote proactive and innovative behavior especially when implementing discretionary powers. Implement low/no cost efforts such as routine patrols and gathering intelligence.

54. Ensure that the SIPA Witness Protection Department is adequately staffed and prepared to systemically follow up on all protected witnesses. Facilitate recruitment of SIPA Officers separating this from civil servant procedures. Separate control from Council of Ministers: Allow the SIPA Director to independently manage and control (reporting, accounting, financing) operations to undertake his responsibilities including direction of the Criminal Investigation Department known as “Internal Control (after amendments to SIPA Law).
55. Create retention and career path policies to reduce high attrition rates impacting the agency’s ability to keep trained “field/operative” personnel. Institute professional career/mentoring programs for Officers. Salaries should reflect the involved risks and alternative options should be offered to well performing Officers, who generally seek upper management positions since these are equated with higher salaries.
56. Implement best practices concerning recruitment and retention of qualified police personnel.<sup>150</sup> Determine for each station the level of community support, weaknesses/goals, community partnerships, poll staff satisfaction, review diversity/minority/gender composition, develop “career path” and opportunity policies, mentoring program for new recruits using veteran staff, institute counseling or access to psychological assistance, access to the Chief for all employees, employee inputs/feedback for strategies, specialized training, family atmosphere promoting respect, promote or highlight policing activities and speak at community events or implement a monthly media announcement, recognize achievements and promote innovation leading to successful practices in the field.
57. Address jurisdiction problems in crossing administrative boundaries through the creation of an extensive network of trained, operational “Police Officer Corps”, like those providing protective services in the U.S. by the “U.S. Marshals Service” or in Italy (Carabinieri--Italian Military Police). These Officers would be vetted, receive extensive training, and contacted throughout the country to provide protection for witnesses when necessary.
58. Work towards improving the communication and cooperation between the SIPA Witness Protection Department and the BiH State Prosecutor’s Offices encouraging an

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<sup>150</sup> Prototype example: International Association of Chiefs of Police—“Big Ideas for Smaller Police Departments”: Smaller departments have valuable characteristics and can be best practices examples in terms of community policing. Quality police work is defined by the quality of public safety and the satisfaction of the community not by the size of the police force. Suggestions include: formulating community partnerships (media, (social/health etc) assistance providers, with schools/universities, among civil society, local community leaders & government, gender commissions.

environment of mutual trust. Prosecutors and the SIPA WPD should harmonize procedures regarding interviewing witnesses and take steps that repeat interviews do not occur since this creates a re-victimization potential. SIPA may need additional training when working with “collaborators of justice”<sup>151</sup>.

59. Harmonize police academy curricula and promote cross entity /regional training/continuing education programs. Promote implementation of police reform policies.
60. The Director has established and should continue to promote good cooperation with the regional witness protection providers. The regional partners have received extensive training, logistical support, and technical equipment (armored vehicles, high caliber ammunition and rifles, surveillance etc). BiH should participate in this type of training and in the provision of Witness Security (FBI/U.S. Marshals Service) and witness protection theory, “contingency and reaction” training, and counter surveillance driving courses. Additional efforts to educate local law enforcement in gathering intelligence “at the crime scene” working in coordination with the WPD to further support team building, communication, and cooperation between local law enforcement and the SIPA officers. Secure funding for these ventures and evaluate previous trainings to determine if they are sustainable and if there are follow up needs.
61. SIPA should receive additional training from U.S. Victim Witness Experts, the SECI Center, and FBI. It is also highly recommended that selected (first phase) local law enforcement officials receive training from the FBI concerning efficient use of resources and conducting investigations in smaller policing units.
62. Implement, if not already in place, extensive (including psychological testing) vetting process when selecting Officers ensuring they have the necessary skills to conduct protection activities but also in terms of being seen as reliable, trained, and “human” meaning they have compassion and understanding for those that they are protecting and to reduce the presence of criminals and alleged, imbedded corruption.
63. Identify alternative accommodation resources (aside from the shelters) secure “safe houses” that act as effective protective accommodation.
64. Institutionalize an Officer’s firearm’s training program (provide ammunition, financial support, training venues, and trained staff). Ensure that a state level agency will buy ammunition and provide the appropriate supplies such as the “Heckler” rifles.

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<sup>151</sup>Council of Europe 22 June 2006 draft: Development of Reliable and Functioning Policing Systems and Enhancing of Combating Main Criminal Activities and Police Cooperation—“Procedural Protective Measures for Witnesses: Training Manual for Law Enforcement and Judiciary”. Collaborators of Justice—means any person who faces criminal charges, or has been convicted, of taking part in a criminal association or other criminal organization of any kind, or in offences of organized crime, but who agrees to cooperate with criminal justice authorities, particularly by giving testimony about a criminal association or organization or about any offense connected with organized crime or serious crime.



65. The SIPA Director should continue contact and relationship/team building efforts with the trafficking shelter providers to offer support from the WPD, to improve communication and cooperation, and as an additional link for the shelters towards other governmental institutions.
66. Allow that Officers are able to react and gather evidence not “waiting” for the Prosecutor to direct them since the Prosecutor is often unavailable. The WPD should take the initiative towards gathering intelligence and directing investigations.

### **Relocation, Resettlement, Reintegration**

67. The Ministry of Foreign Affairs and other relevant state agencies should review relocation options, even as a temporary measure. Many potential host countries constrict the possibility of relocating potential BiH victim witnesses under significant threat. Additionally, many countries are reluctant to accept persons who were engaged in organized and war crimes, lack employment skills, or who do not speak the “host” country language—not to mention that supporting a witness and/or their family completely is extremely costly. Frequently it was noted that destination countries are not cooperative and relocation of BiH witnesses in the immediate region or within BiH itself can be hampered by the post conflict, political, and ethnic complications. The WPD Head stated that this is a special consideration for BiH domestic victims of trafficking and Roma victims were particularly highlighted.
68. Current legislation identifies UNHCR as the responsible body for third country relocation via asylum procedures—eventually should transfer this responsibility to the Ministry of Foreign Affairs. The Ministry of Foreign Affairs should increase its cooperation with the BiH State Prosecutor’s Office.
69. BiH needs to invest resources and create comprehensive internal resettlement, reintegration, and relocation plans involving all service agencies throughout the country and likewise ensure (coordinate and visit) that quality, human rights based approach programs are available in the countries of origin, transition, and destination

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### **Financing & Ownership**

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<sup>152</sup> Ruth Rosenberg (2006) USAID “Shelters Assessment in Bosnia and Herzegovina”. “Organize study tours for shelters to observe reintegration services in the main countries of origin and provide information to trafficked victims and NGO’s concerning reintegration assistance available after repatriation.”

70. The BiH State must continue and increase allocation of financial resources every year in order to: monitor the process, promote implementation, and in terms of developing activities. A substantial increase in funds should be directed to the office of the State Coordinator for Combating trafficking in Human Beings and Illegal Immigration.<sup>153</sup>
71. Address Impunity/Corruption by prosecuting public servants involved in corruption and criminal activities. Allow SIPA to investigate and collect intelligence. Domestic stakeholders have yet to take full ownership of the process and government structures due to continued political problems remain weak, fractionalized, and allegedly fraught with corruption, which provides mixed, poor results in terms of successful prosecution and effective, comprehensive provision of assistance and protection towards trafficked victims.
72. Introduce a revenue collection system, such as collecting late fees from court fines, development of penal work program, and revenues from seized criminal assets or controlled properties could be employed to support the operational aspects of a Victim Witness Coordination System similar to the U.S. Model.<sup>154</sup>
73. Establish a “Victim Witness Assistance Fund” financed by the State and alternative sources as mentioned above.<sup>155</sup>
74. Funding from the international community, international organizations, and donors is still needed to support technical, logistical, and advisory aspects for victim witness assistance and protection—as a complimentary financing mechanism for a state level fund including state funds creating a mechanism of restitution for victim witnesses and in terms of funding assistance/protection programs as part of a long term sustainable structure.

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<sup>153</sup> Ruth Rosenberg (2006) USAID “Shelters Assessment in Bosnia and Herzegovina”. “advocate for revised tax laws, change the way state funding is distributed to ensure standards are met and increase sustainability of services and advocate for an increase in the amount of funding provided by the state”.

<sup>154</sup> The TVPA added another layer of rights and protections for trafficked victims and victims of gender based and/or domestic violence on top of a 25 year history of victims-rights laws. The enactment of the TVPA also enacted the “VOCA” or the victims of crime act fund. This crime fund is established at the federal level and fines adjudicated from those cases are placed in this fund with the U.S. Congress controlling the cap of the fund, which is usually several million dollars. VOCA financial resources are not collected as “taxation based revenue” but through court and penal institutional fines/salaries. Defendants serving time in correctional facilities are able to pay their fines through their prison employment, or by garnishing wages and/or placing controls on their property (properties). These funds are used to provide direct compensation to victims and a formula sends funds to every state crime victim compensation fund (covering the costs of funerals, psychological, and social assistance etc).

<sup>155</sup> ICMPD Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, Nexus Institute--2007“Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe”. “Need for more state supported intervention and assistance.”

### **Gender Agencies—Commissions & NGO Sector**

75. Create educational programs targeting the demand side of trafficking and reviewing gender stereotyping, implement health & human sexuality classes promoting responsible behavior.
76. Gender Agencies should develop more aggressive strategies implementing country wide programs addressing cross-cutting issues associated with trafficking such as: gender mainstreaming and access to employment, education, training, opportunities; education for children regarding violence/sex based crimes; domestic violence; and sexual violence against women.
77. Actively pursue watch dog strategies, in cooperation with other nongovernmental, international organizations, government assistance & protection agencies, to ensure that BiH is respecting, promoting, and fulfilling the rights of women.<sup>156</sup>
78. While creating the Victim Witness Coordination System Gender Agencies should provide focal points to liaise and provide technical advice to those offices establishing Victim Witness Coordinators. This coordination can network with local Gender Commissions raising awareness, promoting human rights-gender sensitive policies, and advocating for due diligence developing policies and strategies to respond to violence against women.
79. Develop detailed yearly action plans and produce quarterly progress reports on the activities and successes for all Gender Commissions, distribute terms of reference and materials (updated laws etc).
80. Commissions should actively pursue networking activities with law enforcement; local community, government, and religious leaders, local government; health care-social institutions; media; and civil society promoting their work/activities-developing relationships-ensuring all actors are pursuing gender sensitive policies promoting education, reporting violence& human rights violations, protection - prevention – prosecution policies.<sup>157</sup>
81. Advocate for the progressive realization of state/local financing to support the above mentioned activities.

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<sup>156</sup> www.hku.hk— „Due Diligence: The duty of the State to Address Violence Against Women“

<http://web.amnesty.org/library/>; www.unhchr.org

<sup>157</sup> (2007) “ICMPD Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe”, Rebecca Surtees Nexus Institute. “Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe”. “Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe”. “The issue of sex and gender needs to be considered throughout the whole process from identification, through return and during assistance.”

## **Public Awareness Campaigns & Media**

82. The State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration should issue regular government policy statements, circulars, and media promotion for victim witnesses promoting the Victim Witness Coordination System and denouncing those responsible for violent crimes (domestic violence, trafficking of persons, sexual exploitation, violence against women).
83. Easy to read, understand, and available fact sheets (and posters) explaining criminal proceedings, protection and assistance available identifying actors, and legal remedies to be distributed to victim witnesses, civil society, faith based organizations, media, and within every service agency (state institutions, judiciary, Prosecutors, law enforcement, victim witness coordination centers etc).
84. Develop reference materials promoting the understanding and awareness of the applicable international and national human rights obligations and victim's rights (if applicable including trans border legal cooperation's) should be included on all fact sheets, raising awareness/educational materials, and media sources informing citizens and victim witnesses of their rights and the obligations of authorized authorities.
85. Continue advocacy efforts educating the media in connection with the treatment of victims of trafficking and victim witnesses and enforce extensive financial penalties for the infractions connected with publishing victims confidential information without the expressed consent of the victim. This includes any reporting which might cause embarrassment or interfere with the victim's private life/psychological health.
86. Institute a media ethical code of conduct incorporating principals of confidentiality promoting the paramount interests of the victims of violent crimes.
87. The State Court Registry, if the Court Support Network program continues to operate, should consult and jointly develop projects with appropriate NGO's. Regular communication, follow up, assessment and monitoring/evaluation of success/impact in communities should be undertaken by the State Court Registry ensuring that the NGO's feel supported, included, and that the awareness raising/community outreach efforts are more successful in the future.

## **Monitoring and Evaluation System**<sup>158</sup>

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<sup>158</sup> ICMPD Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, Nexus Institute--2007 "Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe". "Need for more victim-centered research, evaluation, and programme design."

88. The BiH State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration should improve and expand the system collecting statistics on trafficked victims to include the background data on all victims of violent crimes to review if there are any cross cutting issues related to trafficking.<sup>159</sup> Implement as part of the BiH State Trafficking Database system collected data from all service providers, judiciary, courts, and law enforcement agencies in a standardized method<sup>160</sup>. The Agency for Personal Data should have started in January 2007—however this is still pending for unknown reasons.
89. Conduct throughout the country a crime victim survey such as “The United Nations Crime Victim Survey.” (can be in selected locations for the first phase)
90. International Organizations should continue with other relevant domestic institutions (legal aid providers, Ombudsmen’s, Bar Associations, State Agencies) to monitor implementation at every stage— reviewing and issuing regular reports evaluating compliance and success as well as publishing failures and gaps.
91. All public service-civil servant-private agencies and Victim Advocates and Advisors should develop codes of conduct incorporating confidentiality, the interests of the victims as the paradigm to their work, and avoidance of conflicts of interests among other professionals or agencies.
92. Victims should be informed of this code of conduct and able to register a formal complaint in the event that procedures are not followed.
93. Institute a monitoring mechanism reviewing the work of Prosecutors investigating trafficking cases and impunity and complaint mechanisms<sup>161</sup> when provisions are not applied especially in connection with protection/assistance; institutionalized--specialized training on gathering of indirect evidence, strategies, and coordination with law enforcement to ensure cooperation, coordination, and successful evidence recovery.
94. Implement an effective monitoring and evaluation system to review how witness protection and assistance is delivered holding those responsible accountable for failures. Implement a “sanctions” system when service providers, judiciary, and law

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<sup>159</sup> See Prototype: International Association of Chiefs of Police ([www.theiacp.org](http://www.theiacp.org)) “Police Based Victim Services Survey”.

<sup>160</sup> Written sources of statistic information on crime victims: law enforcement, annual court reports, Ministry of Justice reports, Ministry of Interior reports (and from local law enforcement offices and officers), Penal system reports, relevant health statistics from Ministry of Health, nongovernmental organization reports from service providers, social assistance agency reports, Ministry of Education reports, Studies conducted by academic institutions, donor organizations working on criminal justice research, mental health providers, bar association reports, and Ombudsmen reports, legal aid centers etc.

<sup>161</sup> Prototype Example: [www.doj.gov](http://www.doj.gov) Department of Justice—Complaint Alleging Failure of Department of Justice Employee To Provide Rights to a Crime Victim Under the Crime Victims’ Rights Act of 2004.

enforcement Officers fail to act/react and/or if obstruction of justice occurs by other governmental institutions/civil servants, political parties/persons, individuals etc.<sup>162</sup>

95. Analyze the social and economic factors of socially vulnerable persons susceptible to THB<sup>163</sup>
96. Conduct an assessment and comprehensive legal review of processed trafficking cases (by the BiH State and other Courts) to audit how assistance and protection were applied and the victim witnesses' understanding/satisfaction of their participation in the criminal proceedings.
97. Review the upcoming OSCE Witness Protection Report anticipated for distributed in 2007 when developing a BiH Victim Witness Coordination System.

### **Shelters**

98. Trafficking shelter providers are not always able to secure the necessary services for many victims and the creation of a Victim Witness Coordination System may only facilitate shorter stays or perhaps no placement within shelters, thus it is advised that the shelters are eventually transitioned into "Family Justice Centers" to address a wider range of victims experiencing violence (domestic-sexual-gender-child abuse-trafficking etc) in the community.
99. Consider co location of Prosecutor's, law enforcement, a service provider focal point, a Victim Witness Coordinator, and a SIPA Officer based upon the Family Justice Center experience. This will facilitate case investigation, communication/coordination, provision of services, community outreach, and eventually offer assistance to a broader range of violent crime victims.

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<sup>162</sup> [www.theiacp.org](http://www.theiacp.org) International Association of Chiefs of Police Best Practices Guides: 1) Maneuvering in the Political Environment; What Do Victims Want? Effective Strategies to Achieve Justice for Victims of Crime": Measuring Success—1) define criteria for success early; 2) seek feedback from victims at every stage of the justice process; 3) conduct a national survey of victim satisfaction; 4) note and consider all victim complaints; 5) assess the training needs of professionals who work with victims; 6) assess satisfaction of those professionals, who support crime victims. Evaluations should improve individual and collective effectiveness and the most useful evaluations measure quantitative and qualitative outcomes and the victims' views of the criminal justice system. As the primary customers of the justice system victims' opinions and observations are the most important measure of success.

<sup>163</sup> Addressing „Potential & Presumed Victims“: potential victims are those persons that are part of a risk group vulnerable to become trafficked victims and prevention measures should ensure that he/she does not become a real victim. Presumed Victim: a person that has already been trafficked but not identified—ie currently outside of the legal protection system.

100. Designate a least one “high security” shelter location that is able to offer specialized services to high risk cases needing comprehensive engagement into the Witness Protection Program.
101. Require that shelters, when victims are accommodated, are staffed 24 hours and staffed with professional, trained, personnel and that counseling is available on site. If needed drug/alcohol rehabilitation should be available as well as clinical supervision, stress management (for staff and victims), family mediation and counseling, recreational and income generating activities, protocols of assistance for different categories of victims that the shelter is certified for, and that extensive coordination with law enforcement and government-service agencies takes place to increase effective delivery of assistance, protection, and support to trafficked victims.<sup>164</sup>

### **National Action Plan & National Referral Mechanism**<sup>165</sup>

102. Provide increased independent decision making powers to the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration enabling increased autonomy to act, implement, and enforce stronger programs and measures fighting trafficking in human beings.
103. Appoint the State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration as a full time position and/or allocation of a full time Deputy State Coordinator focused only on the implementation activities associated with the National Action Plan, Victim Witness Coordination System, and functionality of the Trans-National Referral Mechanism.
104. Establish gradually, within the Victim Witness Coordination System, national referral structural bodies (local anti trafficking committees<sup>166</sup>) at the local levels to more

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<sup>164</sup> Ruth Rosenberg (2006) USAID “Shelters Assessment in Bosnia and Herzegovina”.

<sup>165</sup> A National Referral Mechanism strives to achieve the following: 1) protect the rights of trafficked victims while implementing an individual case “victim centered approach” ; 2) support, assistance, and protection is accessible to all categories of trafficked victims; 3) offers a wide range of services addressing/tailored to the needs of each individual; 4) builds upon the existing national action plan capacities—promotes ownership, responsibility, and sustainability among stakeholders further supporting democratic institution building within the state; 5) promotes a cross-sector—multidisciplinary approach involving the relevant government and civil society actors; 6) empowers the victim by showing the system cares for their needs—increases prosecution rates—attaches organized crime and sends a message that the violation of human rights as well as impunity will not be tolerated; 7) creates clear, transparent roles and assignment of responsibilities; and 8) further builds upon regional-international cooperation strategies to fight trafficking of human beings and increased assistance to victims of trafficking.

<sup>166</sup> Local Anti Trafficking Committees include: professional service providers (social, employment, education, training, health, psychological personnel); chaired by Canton/District Prime Ministers; Mayors, law enforcement, SIPA, Ministries of Justice, and Prosecutor’s Office. This Committee monitors implementation of program, exchanges information, promotes cooperation-coordination regarding the situation, and liaises with the central levels of government and the State Coordinator’s Office.

effectively fight against trafficking in human beings—in the first phase this can be achieved within the SIPA regional offices.

105. Develop terms of reference and operational procedures formalized by memorandums of understanding to manage the processes of a Victim Witness Coordination System (from the point of identification, referral, protection and assistance, and also risk assessments). The specific agencies should have quality standards and terms of reference as part this process.<sup>167</sup>
106. Risk assessment procedures should be integrated and applied from the moment of identification implemented by SIPA and included within the Witness Protection Law. These procedures should be included within the laws and by laws of the rule books used by the participating agencies.
107. Limit as much as possible the number of individuals coming into contact with victims including the details of his/her case to reduce re victimization and protection of information. Include presumptions of anonymity for victim witnesses from the initial point. Case files should be produced without disclosing the identity of the victim witness—procedures for this must be implemented within the government, law enforcement, judicial, social service, and victim support agencies preserving safe and secure settings for the victims.
108. Institute best practices mechanisms on enabling victim witnesses to exercise informed consent (law enforcement, prosecutors, and service agencies) using checklists. Develop guidelines to reduce and eliminate possibilities that victim witnesses are not mislead (providing false promises, failing to provide information regarding assistance and protection, pressure to cooperate with state etc) by state representatives (include in standard operating procedures for Prosecutors and Law Enforcement).
109. Create a Victim Witness Advocate/Coordinator position in the BiH State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration office, who will coordinate with the SIPA regional offices and service providers.
110. Establish a state wide (and funded) free telephone hotline number managed 24 hours a day seven days a week all year for trafficked victims. Staff this with trained personnel and include relevant language services.

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<sup>167</sup> (2007) “ICMPD Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe”, Rebecca Surtees Nexus Institute. “Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe”. “Listening to Victims: Experiences of Identification, Return, and Assistance in SE Europe”. “Ensure throughout the process that trafficked victims have access to information, safety and security, linguistic and cultural barriers are considered and addressed, review and devise best practice models of intervention, to reduce poor treatment and problematic interventions, early identification, gaps in anti-trafficking interventions, engagement of victims in the design and implementation of anti-trafficking interventions, consider the issues of sex and gender throughout the process, increased state supported interventions, individual-case-by-case approach, appropriate return-reintegration-resettlement programs and information is available for victims in countries of origin-destination-transit, and more victim-centered research”.



### **Network of specialized legal providers**

- 111. Eventually create an extensive network across the country of specialized legal aid providers to represent victim witnesses. Once the Victim Witness Coordination System is operating throughout the country Vasa Prava will not be able to respond to the demand and need for services.
- 112. Implement a code of conduct for these legal professionals and eventually expand the program to be available to all victims of violent crimes.
- 113. Stringent regimes employing disciplinary measures against legal aid providers and Lawyers/Judges/Prosecutors should be incorporated and function within the HPJC and Bar Associations to deal with impunity, corruption, inappropriate, and unprofessional behavior.

### **Training**

- 114. Conduct joint training exercises with Prosecutors and Judges who deal with implementing international, bi-multi lateral, reciprocity requests and use only special, trained police officers for the summons service rather than local officers.
- 115. The Government should educate all of the relevant authorities regarding the international and national provisions and procedures connected with the summoning of witnesses to appear abroad and the requests for international legal assistance (Ministries of Interior, NGO's, IGO's, service agencies etc).
- 116. Institutionalize sensitivity training for Court police throughout BiH. Court police in plain clothing can provide transport & security services in the event that witnesses are not under considerable threat, leaving the SIPA WPD to provide protection for those cases that are under threat. Implement effective protection programs based upon the BiH State Court identified best practices. Secure financial resources through international donors and with the BiH State.
- 117. Continue and institutionalize training for Judges, Prosecutors, law enforcement officials, and civil servants through the Judicial Prosecutorial Training Centers (JPTC's) on the nature of trafficking including updates when methods used by criminals are adapted; the trafficking provisions within the criminal procedure code, criminal code; applicable international jurisprudence and conventions.

118. Judges, Prosecutors, Law Enforcement Officials receive training on the rights and needs of victim witnesses and management of a victim witness coordination system, as well as human rights standards.
119. Institutionalized, regular-updated victim sensitive training for Prosecutors, Judges, and Law Enforcement regarding the special needs of victims of sexual, physical, or psychological violence—including gender and child sensitive protections and interviewing techniques and the collection of evidence with all Prosecutors’ Offices.
120. Develop and distribute “trafficking toolkits” for law enforcement, health, social service agencies.<sup>168</sup>
121. Once a Victim Witness Coordination Program is created SIPA should continue training for the entity, canton, and district level law enforcement structures. The Victim Witness Coordinator’s and the WPD Officers will require training, technical support, an onsite Psychologist, and an increased number of female Officers to interview and work with trafficked victims.
122. Institutionalize training for Prosecutors, Judges, Law Enforcement, service providers, civil society, and religious communities regarding the CEDAW convention.
123. Continue training the media concerning victim witness rights and sensitization, ethical and accurate and non sensational methods of reporting on court cases while respecting the rights of privacy for victim witnesses.
124. Continue training related to identification of trafficked persons with all relevant state officials. They should be sensitized concerning the guidelines and indicators so that victims are referred to the appropriate assistance and protection service providers as quickly as possible. Consider also specialized training for all stakeholders related to victims that are mentally and/or physically impaired and for orphanages and other socially vulnerable categories.
125. The development of a Victim Witness Coordination System includes the provision to provide additional sensitivity training for all stakeholders (especially Prosecutors and law enforcement) is recommended for to deal appropriately with victims and/or victim witnesses.
126. Provide training for the network of legal aid providers on trafficking, human rights and international standards/conventions, and on victim witness advocacy.
127. Institutionalize within all education curricula courses on trafficking in human beings.

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<sup>168</sup> [www.theiacp.org](http://www.theiacp.org) International Association of Chiefs of Police Best Practices Guides.net

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